

**City of Indianapolis Department of Code Enforcement
Bureau of Licensing and Permit Services**

Request for Quote (RFQ)



May 20, 2011

Presented by:

Myron Bouchakian - Regional Manager NW
Key Merchant Services LLC.
Government & Institutional Sales
Elavon Inc. | A Key Bank Partner
Direct #: 360-894-3090
Mobile# 253-219-9623
Fax: 865-403-5893
Myron.Bouchakian@elavon.com

<u>PROPOSAL SECTION</u>	<u>PAGE</u>
Section 1.0 Transmittal Letter	2
Section 2.0 Company Background and Team Arrangement	4
Section 3.0 Reference Reviews	10
Section 4.0 Detailed Methodology.....	11
Section 5.0 MBE/WBE/VBE Participation.....	17
Section 6.0 Additional Information	17
Section 7.0 Cost Proposal/Budget.....	17

Key Merchant Services (KMS) agrees to the terms, conditions and specifications of the mobile credit card processing terminals portion of the RFP only to the extent that they do not conflict with or vary from Elavon's Payment Device Processing Agreement, a copy of which is submitted herewith (the "Agreement"). The Payment Networks require that Key Merchant Services enter into agreements with its merchants containing specific provisions required by the Payment Network Regulations, which provisions are not included in the RFP. Therefore, in the event that Key Merchant Services is the successful bidder, Key Merchant Services will require that the parties include the terms of the Agreement, in substantially the same form as submitted herewith, in the final contract and will, in good faith, work and negotiate with the requestor toward a resolution of all conflicting items. Further, Key Merchant Services' bid is subject to the requestor's ability to meet Key Merchant Services' underwriting requirements.

In certain instances Elavon may, through its various sales channels, submit more than one response to this RFP. While Elavon's exceptions to the legal terms and conditions of the RFP may be similar, the remainder of the bid and pricing issues will differ due to the independent responses prepared by each sales channel.



To Whom It May Concern:

Key Merchant Services LLC is a joint venture between Key Bank, one of the nation's largest financial institutions offering consumer and commercial banking services, and Elavon, a leading payment processor among the nation's top acquirers. Since 1997, this partnership has created an entity that has been unmatched in terms of service, solutions, and quality relationships.

Key Bank and Key Merchant Services (KMS) have had a long standing local presence in the City of Indianapolis and wish to thank the City for the opportunity to participate in the Mobile Credit Card Processing proposal. KMS understands the requirements of the City of Indianapolis Department of Code Enforcement Bureau of Licensing and Permit Services requirements, and this proposal intends to outline how we can and will; more than clearly, meet all of your Tier 1 requirement needs; as well as effectively respond and coordinate down to the micro level, all specific requests needed in servicing the local taxi cab operations.

As KMS fully understands the public and private sector processing environment, we believe this opportunity to be an excellent fit for Key Merchant Servicing in serving the City of Indianapolis for its Mobile Credit Card Processing needs- so we certainly have a keen interest. In addition we are in a position to fund into any bank account and provide "Next Day Funding" for any Key Bank accounts.

We handle every aspect of the acquiring relationship—transaction processing, risk and underwriting, settlement, equipment deployment, chargeback management, reporting, customer service, security, and compliance.

We have worked with wireless payment terminals ever since their inception and have partnered with the largest manufacturers of these type payment terminal ever since. We are thus in the position to provide state of the art options, not only in this type terminal, but also with protecting card holder data and compliance. We will strive to help further improve your quality of service and to do so in a cost effective manner. Our team's proactive approach can bring about significant gains in these areas relative to implementations of similar services with less engaged partners.

As requested, your direct contact - Myron Bouchakian has 11 years experience in merchant services and will be the representative that will be provide the City with assistance, answer questions, and be your ongoing account representative. He will set up the implementation plan, assign local representation as needed, and coordinate with your service team at all times.

Myron Bouchakian * 1100 Yelm Ave. E. * Yelm, WA 98597* Phone: 360-894-3090
Fax: 865-403-5893 * Myron_Bouchakian@KeyBank.com



Our Strengths

The Industry's #1 Network - Elavon has built redundancy into every system, which virtually assures 100% uptime and extends peace of mind during peak sales seasons.

End-To-End Ownership – Elavon is 100% responsible for front-end authorizations, back-end settlement, and all supporting operational functions. With Elavon, you have one source for all of your payment processing and service needs.

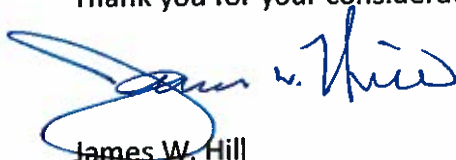
A Trusted Partner – Elavon's Client Relations Team delivers superb service by acting as your dedicated business advocates for all issues concerning the development, implementation, and support of your processing services.

Flexible Payment Options - You can count on Elavon to deliver value-added processing services like electronic gift cards, electronic check conversion, and dynamic currency conversion.

Connectivity – We are not a one-size-fits-all processor. Our Solutions Engineering Team will work with you to determine the best-suited and most cost-effective method for processing on our network.

Today, KMS/Elavon is the country's fourth largest payment processor serving more than 800,000 domestic merchant locations with processing volume in excess of \$250 billion per year.

Thank you for your consideration.



James W. Hill

VP. Government & Institutional Sales






Section 2.0 Company Background and Team Arrangement

Key Merchant Services (KMS) with Elavon, Inc. welcomes the opportunity to respond to the City of Indianapolis' Request for Proposal for mobile credit card processing services for taxis. A decision by the City to enter into a partnership with us presents numerous immediate benefits as well as opportunities in the future. This proposal intends to outline how KMS can meet your requirements, as well as faithfully respond to the specific requirements presented.

As you review current processes in anticipation of a new merchant services partner, consider the many ways our proposal supports the City's goals. Our obligation and objective is to be a good steward of your resources and help discover ways to streamline your financial operations. We strive to help further improve the quality of service that your customers receive and to save you money. Our team's proactive approach can bring about significant gains in these areas relative to implementations of similar services with less engaged partners.

In an increasingly complex business landscape, KMS is your global source for innovative payment solutions—the one company that clients and partners everywhere trust to securely and reliably manage their payments business. Whatever you need and wherever you need it, we deliver innovative and secure solutions to help you increase revenues, decrease costs, and sharpen your competitive edge.

Our industry credentials:

-  #1 Airline processor
-  #2 Hospitality processor
-  #4 U.S. acquirer, based on bankcard volume

We recognize the strategic importance of building a strong and trusted relationship with the City. As an organization, we aim to continually extend long term partnerships by providing a high quality, flexible, and reliable service, at market competitive prices.

KeyCorp was organized in Ohio in 1858 and is headquartered in Cleveland, Ohio. As of March 31, 2011, KeyCorp was one of the nation's largest bank-based financial services companies, with consolidated total assets of approximately \$90 billion. Through KeyBank and certain other subsidiaries, KeyCorp provides a wide range of retail and commercial banking, commercial leasing, investment management, consumer finance, and investment banking products and services to individual, corporate, and institutional clients. As of March 31, 2011, these services were provided across the country through subsidiaries operating 1,040 full service retail banking branches in fourteen states, additional offices, a telephone banking call center services group, and a network of 1,547 automated teller machines.

KeyBank's credit ratings are provided on the following page:



Proposed Solution for Indianapolis Taxis

	View Ratings Scale			
	S&P	Moody's	Fitch Ratings	DBRS Ltd
Long-term Issuer	BBB+ (OS) 11/17/2010	Baa1 (OS) 11/1/2010	A- (OS) 12/2/2010	BBB (high) (OS) 3/31/2011
Senior Unsecured	BBB+ 6/17/2009	Baa1 4/30/2009	A- 12/2/2010	BBB (high) (OS) 3/31/2011
Subordinated Debt	-	-	BBB+ 12/2/2010	BBB (OS) 3/31/2011
Short-term/Commercial Paper	A-2 (WR) 6/17/2009	P-2 (OS) 11/1/2010	F1 12/2/2010	R-2 (high) (OS) 3/31/2011
Preferred Stock	BB 6/17/2009	Ba1 2/17/2010	BBB 12/2/2010	BB (low) (OS) 3/31/2011
Trust Preferred	BB 6/17/2009	Baa3 2/17/2010	BBB 12/2/2010	BBB (OS) 3/31/2011
Bank Individual	-	-	B/C 12/2/2010	-
Bank Support	-	-	5 12/2/2010	-
Credit Ratings (Subsidiaries)				
	S&P	Moody's	Fitch Ratings	DBRS Ltd
KeyBank National Association				
Long-term Issuer	A- (OS) 11/17/2010	A3 (OS) 11/1/2010	A- (OS) 12/2/2010	-
Senior Unsecured	A- 6/17/2009	A3 (WR) 11/1/2010	A- 12/2/2010	A (low) (OS) 3/31/2011
Subordinated Debt	BBB+ 6/17/2009	Baa1 (WR) 11/1/2010	BBB+ 12/2/2010	BBB (high) (OS) 3/31/2011
Short-term/Commercial Paper	A-2 (WR) 6/17/2009	P-2 (OS) 11/1/2010	F1 12/2/2010	R-1 (low) (OS) 3/31/2011
Long-term Deposit	-	A3 (OS) 11/1/2010	A 12/2/2010	A (low) (OS) 3/31/2011
Bank Individual	-	C (OS) 11/1/2010	B/C 12/2/2010	-
Bank Support	-	-	4 (WN) 12/2/2010	-

Ratings Watch Action Legend: (WP) Watch Positive, (WN) Watch Negative, (WU) Watch Uncertain, (WR) Watch Removed, (OP) Outlook Positive, (ON) Outlook Negative, (OS) Outlook Stable, (OD) Outlook Developing

Key Merchant Services is provided in partnership with Elavon, Inc. (formerly NOVA Information Systems)—providing payment solutions since 1991—headquartered in Atlanta, Georgia. Elavon is a wholly owned subsidiary of U.S. Bancorp. Operational offices are also in Knoxville, Tennessee and Englewood, Colorado. Our corporate headquarters are located at:

One Concourse Parkway
Suite 300
Atlanta, GA 30328

KMS provides end-to-end payment processing services to merchants and financial institutions in the United States, Mexico, Puerto Rico, Canada, and throughout Europe—more than one million merchant accounts. Our payment products are supported by the most reliable network in the industry and include credit and debit card processing, electronic check services, gift cards, multi-currency support, and cross-border acquiring. We handle every aspect of the acquiring relationship—transaction processing, risk and underwriting, settlement, equipment deployment, chargeback management, reporting, and customer service. Our customers can also count on us to keep their payment processing compliant with changing payment security requirements.



Proposed Solution for Indianapolis Taxis

KMS offers processing for the following Payment Solutions:

- Visa®
- MasterCard®
- American Express®
- Discover®
- Diner's Club®
- JCB®
- Debit Cards (signature and PIN based)
- Bill Payment (PINless debit)
- Electronic Benefits Transfer (EBT)
- Petroleum Services including Fleet Cards
- Corporate Purchasing Cards
- Wireless Services
- Contactless Services
- Dynamic Currency Conversion (DCC)
- Electronic Check Service (ECS) – Point of Purchase (POP), Accounts Receivable Conversion (ARC), ACH Processing, and, in certain instances, Internet (WEB), Telephone (TEL), and Prearranged Payment and Deposit (PPD)
- Electronic Gift Cards (EGC)
- Enterprise Billing Solutions – including Internet, CSR/Admin, IVR (English and Spanish), and Integrated Point of Sale, and, where applicable, Convenience Fees, Government/Public Institution Fees and Utility Program
- Convenience Fees (Merchant or KMS managed)
- Hospitality Services
- No Signature Required Program Services
- Processing Services in Europe, Canada, Mexico, and Puerto Rico

Your first point of contact is the **Regional Sales Manager** as the City's initial and ongoing reference for any and all payment service needs. Myron Bouchakian will function as the point person for all activity associated with KMS, including payment service concept design, pricing, and the contract process going forward. Myron will also remain actively involved during the implementation process.

Myron Bouchakian

Regional Sales Manager NW
Government and Institutional
360.894.3090 (office)
253.319.9623 (mobile)
865.403.5893 (fax)
myron.bouchakian@elavon.com

Myron Bouchakian brings a distinguished career in sales and merchant account management to his role as a point-person for the City of Indianapolis. He carries five years of experience with First Data TeleCheck as well as five years of experience with Elavon where he consistently leads in performance and production. Myron is responsible for driving new merchant business for the KMS/Elavon government, institutional, and bill payment markets team for the United States. He holds a bachelor's degree in business administration from Northern Arizona University and is now based in Seattle, Washington.



Proposed Solution for Indianapolis Taxis

James W. Hill

Vice President, Government & Institutional Sales
678.731.5489 (phone)
309-285-7390 (fax)
james.hill@elavon.com

Jim Hill brings more than 18 years of experience in marketing card and transactions services to consumer, commercial, and public sector markets, starting with GE Capital in 1992. In 1998, Jim was appointed Marketing Manager at VeriFone Finance, Inc., the finance arm of VeriFone, the world-wide leader in point of sale payment systems. In 1999 Jim served on the senior corporate sales team with the Elavon MSP Rand Bankcard Services, where he designed, developed, and implemented large national merchant processing programs. And in 2002, Jim served Rand as Managing Director of the National Sales Center in Roswell, GA. Coming to Elavon full time in 2003, Jim served as Regional Sales Manager for Government & Institutions with Elavon in the Southeastern United States markets and ultimately was appointed to Vice President of Government and Institutional Sales for Elavon's Vertical Markets group. Jim holds an MBA from the Goizueta Business School at Emory University.

Annette Sledge

Vice President, Client Relations Management
678.731.5902 (phone)
770.394.5612 (fax)
annette.sledge@elavon.com

Annette has over 15 years experience in the payments industry; building, supporting and retaining large national client base. She has vast experience with multi-vertical markets including public sector, supermarket, petroleum, retail, restaurant and financial institutions. She has over 15 years management experience in customer service, client support, sales, product, and project implementation. She is a graduate of Old Dominion University.

Paul Gurtner

Director, Client Relations
412.464.2714 (phone)
412.464.2716 (fax)
paul.gurtner@elavon.com

Paul is a 26 year veteran of the credit card industry, and has supported work on both the Issuing and Acquiring business. He has the great opportunity to experience all facets of the Merchant Acquiring business. For the previous 7 years before coming to Elavon, Paul held the role of Account Executive and Product Manager for the Public Not for Profit sector at Mellon Financial.

KMS employs a focused and multi-pronged approach to strategic management of account relationships. Customized service level offerings are based on customer needs. KMS assigns a **Client Relations Team (CRT)** to act as business advocates for the City. Led by your assigned *Client Executive*, these trusted and proactive advisors play a lead role in helping develop and implement processing solutions. Your CRT will conduct regular meetings with you to guide your payment processing experience, and to ensure that all of your partnership expectations are met. The City's Client Relations Team (CRT) will include an Implementation Project Leader, Client Executive, and Client Support Specialist. *As these are the early stages of the bid process, personnel within your CRT are yet to be determined.* Specifically assigned team members will be named later in the process.



Proposed Solution for Indianapolis Taxis

Your Client Relations Team will be responsible for:

- Evaluating your needs and carefully mapping them to present and future KMS products and services, to ensure that your objectives are met and your satisfaction is complete.
- Assisting with compliance with interchange rules—helping customers qualify for the best possible interchange rates.
- Working proactively to anticipate Card Association changes—helping to minimize negative impacts and capitalize on the opportunities these changes create.
- Guiding activities involving implementation of new products or software updates, or service-level enhancements.
- Conducting periodic operational reviews to help customers receive optimum value from KMS products and services.
- Serving as a primary point of escalation and acting as an advocate on your behalf.
- Handling contract renewals, amendments, and other paperwork.
- Focusing on establishing and maintaining a winning partnership—where KMS and our customers receive mutual value from all undertakings.

Your **Implementation Project Leader (IPL)**, from the highly experienced Client Solutions Implementation Group (CSIG), will work closely with you—via conference call, email, and phone—during the conversion period to assess your processing and reporting needs and ensure that the best options are available to you.

- Manages the implementation process
- Works in close collaboration with your technical team and product management group
- Manages certification, testing, implementation, and post-implementation processes

Your **Client Executive (CE)**—from within your CRT—acts as your own internal advocate on a broad range of issues that relate directly to your satisfaction and plays a pivotal role in the oversight of your customer experience including:

- Aligning your payment acceptance strategy and our execution to drive the results that meet your expectations
- Collaborating with your company, service providers, partners, and other resources on the successful delivery of new business initiatives
- Delivering and interpreting operating results through our Strategic Account Review process
- Acting as your senior point of escalation for partnership impacting issues

A **Client Support Specialist (CSS)** works within your Client Relations Team to closely support your staff, their business needs and the day-to-day issues. This individual will remain your primary operations contact, and will be responsible for, but not limited to, the following:

- Bringing new locations online
- Reviewing your statements and interchange status
- Handling chargeback issues
- Providing other back-office services related to your processing needs

If a joint venture or subcontracts are contemplated, provide the same information as above for any subcontractors, and explain their role in the contract. (The prime contractor must assume all responsibility for all products and services, including the work of any subcontractors.)

KMS is one of the few processors within the industry that performs most bankcard processing functions in-house. These functions include all bankcard interchange and settlement processing, exception item handling (i.e., retrieval requests and chargebacks), accounting and billing, reporting and statement production, new card acceptor implementations and training, and customer service. We choose to not use third party processing



Proposed Solution for Indianapolis Taxis

vendors for these key functions so that we may have direct control of these critical processes, which translates into better service for you, our client. It should be noted that based on unique requirements of each of our customers, we have the ability to utilize certain approved third party providers. The use of such third party providers will be reviewed on a case-by-case basis.

Each RFQ respondent must:

- Furnish the City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the State of Indiana, any unit of local government, or the United States;

We are licensed to process in the state of Indiana. We would be glad to work with the City to provide necessary documentation and authorization for processing in Indiana. Through further discussion, please indicate what certification the City will need to see and within what timeframe.

- Maintain its license, permit, registration, authorization, or certification, as required by the State of Indiana, any unit of local government, or the United States;

Key Merchant Services commits to maintaining legal status in all cities, states, and countries in which we process.

- Have the capacity to maintain accurate records of all products and services performed under contract.

We have an unmatched relationship management structure and will work closely with the City to understand the products and services performed, align the correct unique solutions for the City's needs, and set the City up with our MerchantConnect comprehensive online reporting and transaction management system.



Section 3.0 Reference Reviews

City of Anderson

Pam Stafford-IT Specialist
Karen Carpenter-Controller
120 East 8th Street
Anderson, IN 46016
Phone: 765.648.6050
Fax: 765.648.5975
pstafford@cityofanderson.com

City of Cleveland

Natalie Banks, Fiscal Manager
Division of Treasury
Phone: 216.664.7463
Fax: .216.664.2247
nbanks@city.cleveland.oh.us

Witham Memorial Hospital

Amy Lowe
Decision Support Manager
2605 N. Lebanon Street
Lebanon, IN 46052
Phone: 765.485.8000
alowe@witham.org



Section 4.0 Detailed Methodology

Based on the understanding of the Scope of Products and Services, the vendor should detail the methodology and processes they will use to implement the products and services for the Licensing. This should include:

- 4.1 A brief narrative delineating the general understanding of the products and services to be provided, and the approach proposed to complete the required work.

KMS is proposing a program with two viable options that satisfy the City's Tier 1 requirements. In addition, KMS is providing the City taxis with the flexibility to acquire the equipment. Offered is a purchasing program, as well as our easy-to-lease option of the wireless payment terminals with terms of either 24 or 36 months.

Once awarded with this contract, KMS will work with the City in providing an organized roll-out plan engaging the taxis with the relevant program information designed to help them (1) decide on their options and (2) get them started. The start-up pack information, the applications, detailed and pictured equipment features with benefits and options, as well as contact information for their training and/or for any questions they may have will also be provided to them. Additional pertinent information will be provided to them by via toll free telephone and/or website.

In addition, as part of their program, they will receive an outline/template, and/or manual type information for their selected payment terminal. They will learn the important functions of the terminal as well as the "best practices" associated in accepting credit cards. The website for "free online reporting" will also be provided to the taxis so they can reconcile their settlements and deposits. A 24/7 toll free phone number will also be available for support if they should have questions whatsoever.

The taxis will be able to accept Visa, MasterCard, American Express, and Discover cards and receive settlement and funding into their desired bank account within 2 business days. The taxi drivers can be trained to reconcile their tips and manually settle their terminals. They may also be made aware that any taxi depositing into a Key Bank account may receive Next Day Funding (industry norm is 2-3 business days).

Additional and ongoing information will be provided for the purpose of PCI compliance so that taxis are aware of their responsibilities as it relates to PCI compliance and securing card holder data.

An additional option for the City to consider is through our strong and trusted relationship with Verifone. Verifone has a dedicated **Transportation Systems** team that has prepared a proposal to meet both Tiers and their subsets. This proposal is outlined in detail in Section 6.0 "Additional Information." All equipment outlined in this transportation proposal, if not already certified to our network, would be equipment we would certify to if awarded this contract. That way, the City would have the state-of-the-art technology from Verifone, backed by the experience and integrity of our processing network. We would certainly welcome further discussions with the City to determine how we can best serve your needs.



4.2 A detailed description of how the vendor will satisfy each tier of “Scope of Products and Services” must be clearly addressed for the vendor to be preferred by Licensing, but a complete proposal need only satisfy at least one tier.

- A wireless credit card processing terminal compliant with at least one, but preferably one option for each tier and subset according to the following requirements:
 - Tier 1: Base level wireless credit card processing terminal:
 - Handheld processing unit or a unit attached to the vehicle;
 - Must accept all major credit card carriers as well as check cards;
 - Must wirelessly encrypt and transmit the information; storing the information in memory for future transmission is unacceptable;
 - Prints a sales receipt; and
 - Is not required to be linked to taximeter;

It is our pleasure to present two options as solutions to meet the City’s Tier One requirements—in addition to the full-service proposal that we are providing through our partnership with Verifone (see Section 6.0). Both the Verifone Vx610 terminal and the Hypercom M4230 are extremely reliable battery operated handheld units with which taxi drivers would be able to accept all major credit cards, process transactions quickly, wirelessly encrypt and transmit data, and print customer receipts, thus satisfying the City’s Tier 1 requirements.

Both the Verifone Vx610 wireless terminal and the Hypercom M4230 wireless terminal bring with them PCI PED-approved advanced security with sophisticated file authentication, encryption and other security features to safeguard your transactions and the devices. Both terminals can provide “multi-application” or “Multi-Merchant ID” capability actually allowing these units to be shared by different proprietors if necessary, and thus allowing settlements to deposit into different bank accounts if need be. This means that one taxi owner can share the terminal with another and yet the funding/settlement would NOT be co-mingled.

Both terminals maintain a long battery life which would allow for “All-Day” use and rechargeable from either a wall outlet or the car’s cigarette lighter. Both terminals will support more than 200 transactions daily.

The Verifone Vx610 terminal utilizes CDMA technology with Sprint being the wireless provider. Sprint coverage is excellent all throughout Indianapolis and its suburbs. See Section 6.0 “Additional Information” for coverage map. The Hypercom M4230 utilizes GPRS technology utilizing T-Mobile as its wireless provider. T-Mobile also has excellent wireless coverage throughout the Indianapolis area and outlying areas. See Section 6.0 “Additional Information” for coverage map.

- The vendor shall provide all labor, materials, hardware and equipment required to fully support the required services for the taxis in any agreements resulting from this RFQ.

KMS can provide the 24/7 service that would be demanded from the City, as well as provide all equipment and equipment support to satisfy Tier 1 of this RFQ. In addition, we will be able to facilitate the roll-out, underwriting, training, and implementation for all taxis.

- Financing models that pass the cost of the terminal on to the consumer are NOT permissible.

KMS understands and can comply with this request.



- The vendor shall provide a backup plan to account for equipment failure. A copy of this plan shall be furnished with the RFQ response.

One of the key areas differentiating us from our peers is our dedicated, in-house relationship management teams. You will be assigned a Client Relations Team (CRT) who will be responsible for evaluating your needs and carefully mapping them to present and future KMS products and services, to ensure that your objectives are met and your satisfaction is complete. Your CRT will conduct regular meetings with you to guide your payment processing experience, and to ensure that all of your partnership expectations are met.

From within your CRT, you will be assigned a Client Executive (CE), who acts as your own internal advocate on a broad range of issues relating directly to your satisfaction, and a Client Support Specialist (CSS), who closely supports your staff, their business needs, and the day-to-day issues that arise. Should you encounter any issues with your equipment or processing capability, these individuals will promptly address your concerns.

KMS has maintenance/swap processes in place to handle replacement of malfunctioning terminals for merchants. We generally replace the malfunctioning terminal for a like terminal. Typically we provide same day shipment for next day delivery of equipment, if the request is received in our deployment center by 3:00 p.m. Fees may apply.

Our standard terminal maintenance program provides the following:

- If the taxi purchases a new terminal from KMS, we will swap the malfunctioning terminal for a like terminal. Fees may apply.
- If the taxi has an existing terminal upon coming to KMS that malfunctions after setup, we will swap the malfunctioning terminal for a like terminal. Fees will apply.

KMS' Deployment Center is located in a company-owned 26,000 square foot facility in Knoxville, TN. Our facility provides equipment deployment, terminal programming, inventory management (both internally and in field active devices), PIN encryption, equipment testing, and repair or refurbishment. KMS' Deployment Center is one of the only fulfillment centers in the industry to operate 100% turnkey and has the largest repair facility in the industry that is licensed by all major equipment vendors to conduct in-house repairs.

4.3 A detailed description of each piece of equipment that will be used to provide the products and services.

Vx610 Terminal

VeriFone's Vx610 wireless terminal delivers reliable, high-speed performance, advanced functionality, extended coverage, and exceptional ease of use. Using the Sprint CDMA Wireless Data network, the Vx610 allows transactions to be processed just about anywhere, at any time. This is an optimal solution for taxis taking payments on-the-go. Plus, the Vx610's battery-powered, all-in-one design eliminates the need for cords and charging bases, giving you more mobility and hassle-free performance than ever before. The Vx610's intuitive ATM-style interface and compact ergonomic design provides a familiar experience for users.

VeriFone's Vx610 offers the largest portfolio of wireless options on the market. VeriFone offers the latest and the most reliable





advancements in security. New points of payment can be set up anywhere, so it's perfect for businesses on the go.

The Vx610 is a portable powerhouse—a battery-powered payment device with exceptional performance and high-end functionality. It uses the latest wireless technologies—CDMA and GPRS—and has advanced security with PCI PED approval.

VeriFone's PCI PED approved Vx610 is a wireless solution that delivers blazing performance, high-end functionality, and exceptional ease of use—without tying customers to a fixed location.

The Vx610 is powered by a 32-bit processor, so it swiftly handles even the most complex mag-stripe or smart card transactions using a choice of the latest wireless technologies, such as GPRS and CDMA. And its modular design provides true investment protection, allowing modules to be easily swapped, should new versions of a technology emerge.

Flexible Features Mean More Opportunities

- Largest portfolio of wireless options including GPRS and CDMA
- Accepts credit cards, debit cards and gift cards
- ATM-style interface, ergonomic design with large keys, large backlit display and bold menu prompts provide a friendly user experience
- "Always-on" connection and lightning fast processing mean customers spend less time waiting to pay

Packs a Battery-Powered Punch with Security

- Long-life battery supports transactions all day long
- Integrated PCI PED approved PIN pad allows clerks to easily hand over the device to customers for secure PIN entry
- Sophisticated file authentication, SSL/ TLS encryption and other security features further safeguard your transactions
- Mag-stripe transactions are handled easily and securely

On-The-Go Benefits

- Wireless connectivity saves counter space, reduces clutter and keeps you on the go
- Save money with multiple payment devices using a single broadband connection
- Supports value-added applications for increased revenue

Additional information about Vx610 is included in Section 6.0.

Optional Accessories

Car Charger



Power your terminal or charge your battery on the fly

Battery Charger



Charge an extra battery for high volume environments or while on the road (includes spare battery)

Spare Battery



Large capacity battery lasts all day

Carrying Case



Nylon cover with shoulder strap for added protection and carrying convenience



20



M4230 Terminal

The Hypercom Optimum M4230 is a unique mobile terminal that offers GPRS Technology at an excellent price point. It does possess a slightly smaller sized screen than the Verifone Vx610, yet has the same long lasting rechargeable battery capability. It also comes with the optional accessories that are listed for the Vx610 above.

The M4230 terminal is a mobile payment solution that ensures you are able to quickly, efficiently and securely process transactions anywhere, any time; it's an ideal solution for businesses on the go. The compact ergonomic design provides easy transport and the extra long life battery ensures that you have enough power to get through even the busiest day. It can effectively process credit and debit cards, gift cards, dynamic currency conversion (DCC), and electronic benefits transfer (EBT). The M4230 makes mobile processing quick and easy while meeting today's stringent payment industry security standards.



Flexibility and Ease of Use

- Charging dock ensures the terminal is fully charged between uses without tethering the terminal with cords and provides dial communications back up
- ATM-style keyboard is intuitive, simplifying training
- Bright, white backlit display offers a clear sharp image for maximum visibility in any lighting or environment
- Sureload thermal printer offers drop-in paper loading virtually eliminating paper jams and supports large paper rolls for more transactions between paper changes
- Compact design and integrated PIN pad allow you to easily hand over the device to customers for secure PIN entry

Wireless You Can Count On

- Extensive wireless coverage through T-Mobile's GPRS Data network. Coverage can be checked online at: <http://www.t-mobile.com/coverage/pcc.aspx> or in Section 6.0.
- Lightning-fast transaction speed – transactions processed in 3 to 5 seconds
- Long life battery supports over 200 transactions in a single charge, providing enough power to get through the day
- Meets the latest payment industry security standards

Features

- Supports multiple payment types including: credit, PIN debit, electronic gift card, Electronic Benefits Transfer (EBT) and Dynamic Currency Conversion (DCC)
- Where eligible, supports "No Signature Required Program" for faster credit card acceptance
- Supports up to 10 different Merchant IDs for use across multiple divisions or businesses

Additional information about M4230 is included in Section 6.0.



Section 5.0 MBE/WBE/VBE Participation

1. It is the policy of the City of Indianapolis that Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), and Veteran Business Enterprises (VBEs) shall have the maximum feasible opportunity to participate in the performance of contracts. Consequently, the City, through Article IV, sections 201-401 of the revised municipal code and Executive Order 5, 2008, has established MBE participation goals of 15%, WBE participation goals of 8%, and VBE participation goals of 3% for its dollars spent on public works, goods, and services.
2. Please check the appropriate category listed below for all that apply. (for record keeping purposes only)

Vendor is certified with the City of Indianapolis as a:

- ☐ minority business enterprise
- ☐ women business enterprise
- ☐ veteran business enterprise

As an acquirer, Key Merchant Services does not apply as a minority, woman, or veteran-owned business enterprise. However, through our partnerships, we can work with certified MWBE organizations to provide processing for Indianapolis taxis. Further discussion will allow us to outline some of these options for the City to consider.

Key Bank has dedicated a Supplier Diversity team within our Community Development Banking group in order to execute the following:

- Bring focus and accountability to our service commitment
- Establish a measurable corporate wide supplier diversity procurement process
- Provide employees access to minority and women-owned suppliers in their communities
- Work with majority corporations to track and support the suppliers they use for services; We expect them to establish a program and work with them to find suppliers to support our needs
- Assist in the development of internal departmental strategies to enhance procurement opportunities



Section 6.0 Additional Information

In the following pages, you will find supporting information for this RFQ response.

Tab A – Dynamic Currency Conversion (DCC) information

Tab B – Product information (Vx610 and M4230, as well as Vx680 for additional information)

Tab C – Coverage Maps

Tab D – Sample Payment Device Processing Agreement (PDPA) [in a separate file for the electronic response]

Tab E – Verifone's Transportation solution



Dynamic Currency Conversion (DCC) Pays You Back

KMS is proud to include as a feature to this proposal a rebate program which would be credited to the taxis whenever they accept a foreign credit card issued from a bank from outside the United States and Territories. There are more than 40 currencies around the world participating in this program.

Your international customers will know exactly what their total purchase is in their home currency at the time the drivers process the transaction. Conversion rates are typically much more competitive than those at money exchange booths or hotels. Each receipt shows the purchase amount in our currency, the conversion rate, and the total amount in the cardholder's home currency. This is a convenient feature for the taxis and good for business.

Our *Dynamic Currency Conversion (DCC)* solution allows international cardholders in the U.S. the option to have their purchases instantly converted at checkout into their local currency. Currency conversion is calculated at a competitive exchange rate, and the U.S. dollar amount, conversion rate, conversion fee, and home currency amount are all disclosed at the time of sale and printed on the transaction receipt. Merchants and KMS partners have the opportunity to share in the revenue generated from conversion fees.

DCC works with foreign-issued MasterCard and Visa cards. Currencies supported include the Australian Dollar, British Pound, Canadian Dollar, Euro, and Japanese Yen. DCC allows cardholders to know exactly how much their purchase costs, in their own currency, at the time of sale. Merchant funding is done in U.S. dollars, and merchants receive a rebate for all DCC-qualified transactions on their monthly processing statement.

Benefits of DCC

Indianapolis Taxis:

- New source of revenue – *merchants share in the conversion fee*
- Improved customer service - international customers know exactly how much they are spending at the time of sale
- Fewer chargebacks – cardholder recognize the sale amount when their bill is received

Cardholders:

- Instantly converts purchase to an amount they can easily understand
- Very competitive exchange rates
- No shocks when credit card bill is received

KMS offers the only end-to-end DCC solution in the industry. KMS obtains and manages all direct treasury exchange rates in-house. Authorization is done over KMS' network and KMS controls all back-end reconciliation, settlement, and funding. No third-party companies are involved; making it easy to service merchants and resolve any currency conversion or chargeback issues that may arise.

KMS shares the income generated by processing foreign transactions by rebating a percentage of the conversion rate to you on your monthly processing statement. The more international business you do, the more savings to your bottom line.





Dynamic Currency Conversion

Improve Your Bottom Line While Catering To Your International Clientele.



Put money in your pocket with a solution that benefits you and your international clientele.

An Essential Service For Our Shrinking World

People from all over the world flock to the U.S. for vacations, business trips, educational opportunities and medical services. Many U.S. merchants in tourist locations serve international customers – from sightseeing tour operators to golf and ski resorts, to shopping, dining and entertainment venues.

As you can imagine, most consumers are more comfortable making purchases in their home currencies. Yet typically, credit card payments are made in U.S. dollars and converted later to the buyer's home currency with the cardholder paying a conversion fee to the card issuer.

Now, there's a smart alternative: Dynamic Currency Conversion (DCC) from Elavon, the processor with the #1 rated payment network for availability and reliability.


Elavon

Instant. Immediate. On-the-Spot.

Elavon's Dynamic Currency Conversion solution helps your international customers feel more at home, while helping you improve your bottom line.

Dynamic Currency Conversion Service Features:

- International Visa and MasterCard credit card purchases are converted instantly at the point of sale (POS) to the cardholder's home currency.
- Conversion is made at a very competitive exchange rate – eliminating unpleasant surprises for consumers when their credit card bill arrives.
- DCC carries no activation fees, monthly fees or monthly minimums – getting started is easy.
- Best of all, Elavon will rebate a share of the conversion fee to you, offsetting card acceptance costs by generating additional revenue for your business.

Improve Service for International Customers

With DCC, your international customers will know exactly what their total purchase is in their home currency. Conversion rates are typically much more competitive than those at money exchange booths or hotels. Each receipt shows the purchase in U.S. dollars, the conversion rate, plus the cardholder's home currency amount. This makes it easier for travelers to reconcile purchases when paying card balances.

Elavon's DCC service converts U.S. dollars into a variety of currencies, including:

- Euro
- Japanese yen
- British pound
- Australian dollar
- Canadian dollar

DCC Pays You Back

Elavon shares the income generated by processing foreign transactions and rebates a percentage of the conversion fees to you on your monthly processing statement. The more international business you do, the more you improve your bottom line. Plus, because the amount on the receipt matches that on the cardholder's statement, DCC reduces the number of chargebacks due to unrecognized amounts.

Elavon's DCC service works with all MasterCard® and Visa® credit cards from countries with supported currencies. Conversion rates are accurate, market-driven, and updated daily. And fees are very competitive with those currently charged to the cardholder by card issuers.





You Can Bank on Elavon

Elavon provides key advantages compared to other processors and third-party providers.

Complete Solution

Elavon offers the only end-to-end DCC solution in the industry. You get the advantage of direct treasury exchange rates and transaction processing, back-end reconciliation, settlement and funding. No third-party companies are involved. The solution is all processed over Elavon's Network, rated by MasterCard as #1 for speed, availability and reliability.

Single Seamless Process

Elavon's DCC service is transparent and effortless. Your monthly processing statement will clearly indicate the total DCC rebate earned and will deduct the amount from your total balance. And, because Elavon handles the DCC process from start to finish, you have a single point of contact for all your service needs.

Unmatched Experience

Elavon has been offering DCC service in Europe since 2001. Thousands of merchants have provided better service to Europe's cross-border consumers and earned millions of dollars of additional income in the process. No U.S. payment processor has more experience with DCC than Elavon.

How Elavon's DCC Works

DCC doesn't require clerks to identify authorized international credit cards – transactions are initiated like always, with a card swipe. When the transaction is sent for authorization, Elavon will automatically determine if it is a foreign DCC-qualified card. If it is, the clerk is prompted to confirm the conversion with the cardholder and a DCC receipt will print. Funds are settled in U.S. dollars, and reports clearly indicate both foreign and U.S. dollar amounts.

DCC is a service
you can clearly
take to the bank.

ABC MERCHANT
19 HOCKEY STREET
ATLANTA, GA 30328

TERMINAL ID: 0020990000200181234567
MERCHANT #: 2001812345

VISA
4988335555555554
SALE
BATCH: 000004
DATE: FEB 23, 08

EXP: 12/11
INV: 000012
TIME: 14:10
AUTH: 012345

TRANSACTION CURRENCY (EUR)
CONVERSION RATE 00.796677

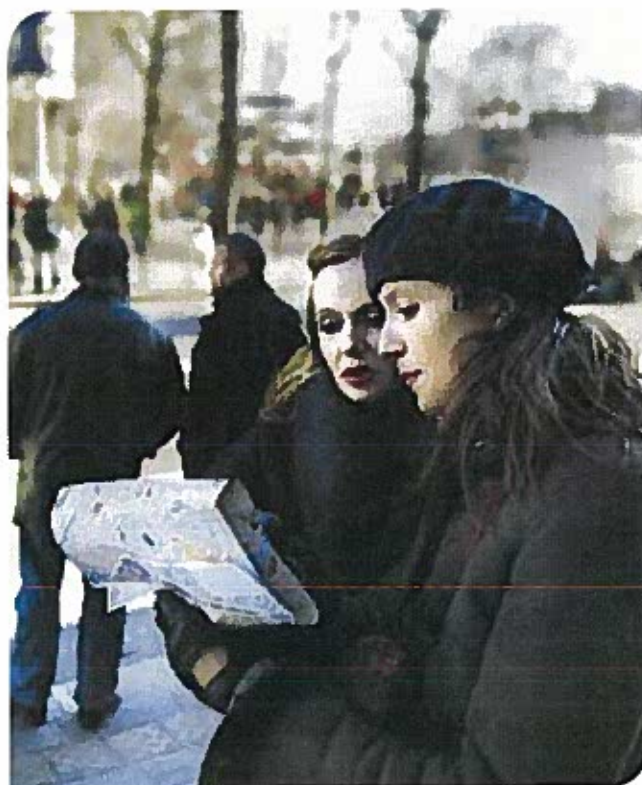
TOTAL (USD) \$55.00
TOTAL (EUR) €43.82

I have been offered the choice to refuse this currency conversion, and my decision to accept currency conversion on this transaction is final. I accept the conversion rate, (inclusive of a Conversion Fee of 3.25%), final amount, and that the final settled transaction currency is (EUR).

I understand that VISA has a currency conversion process and that I have chosen not to use the VISA currency conversion process, and I will have no recourse against card issuer with respect to any matter related to the currency conversion or disclosure thereof.

x *Jean Marc Parer*
MERCHANT COPY

Sample Receipt







Absolute Reliability From The #1 Payments Solution

With Elavon and DCC, you are assured that your transactions will be processed and converted without fail.

A World of Reasons to Choose Elavon

Elavon's DCC service is the industry's best – helping your customers feel more at home, while helping you improve your bottom line. In addition, it's another solution in our complete line of payment services – from credit and debit card processing to gift cards and electronic check services.

All of which give you a world of reasons to choose Elavon.

Interested in a DCC Rebate Analysis?

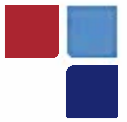
Let us give your merchant account a thorough checkup! Some processors actually surcharge for foreign card transactions. We'll review your foreign card transaction activity and costs to calculate your estimated monthly DCC rebate.





VeriFone Vx 610

Portable Point-of-Sale Solution



Reliable and High-speed
"Portable Powerhouse"



Benefits at a Glance

- Portable payment processing, great for home delivery, kiosk and much more
- Industry leading wireless coverage through Sprint's CDMA wireless data network
- Familiar ATM-style interface and large backlight display ensure ease-of-use

VeriFone's Vx 610 wireless terminal delivers reliable, high-speed performance, advanced functionality, extended coverage and exceptional ease of use. Using the Sprint CDMA Wireless Data network, the Vx 610 allows transactions to be processed just about anywhere, at any time. New points of payment can be set up wherever you like! This is a great advantage for anyone who needs to offer payment in a temporary location or a business that's on the go. Plus, the Vx 610's battery-powered, all-in-one design totally eliminates the need for cords and charging bases, giving you more mobility and hassle-free performance than ever before. The Vx 610's intuitive ATM-style interface and compact ergonomic design provides a familiar experience for users. With all this to offer, it's no wonder the Vx 610 is known as the "portable powerhouse."

VeriFone Vx 610



Portability Means Flexibility

- Accept card transactions anywhere, anytime – instantly add an extra lane during sales, busy holiday seasons or peak store hours
- Offer additional points of sale for home delivery, or at drive-thru windows and kiosks
- Save on counter space and reduce clutter – no need for clumsy, expensive docking stations or power cords even if you're on the go

Wireless You Can Count On

- Industry leading wireless coverage through Sprint CDMA Wireless Data network. Coverage can be checked at: www.sprint.com/coverage
- Lightning-fast transaction speed – transactions processed in less than 4 seconds
- Advanced antenna technology provides connectivity even in hard-to-reach areas

Ease of Use & Familiar Design

- ATM-style interface, large keys, large backlit display with bold menu prompts, and ergonomic design provide a friendly experience for users and employees alike
- High-speed thermal printer with "clam shell" design and drop-in paper loading virtually eliminates jams
- Integrated PIN pad allows clerks to easily hand over the device to customers for PIN entry

Features That Complete the Package

- Supports multiple payment types including; Credit, PIN Debit, Electronic Gift Card, Electronic Benefits Transfer and Dynamic Currency Conversion
- Where eligible, supports "No Signature Required Program" for faster credit card acceptance
- Long-life battery makes all-day use possible
- Dual modem design – process transactions in-store using traditional dial or operate wirelessly for added flexibility

Optional Accessories

Car Charger



Power your terminal or charge your battery on the fly

Battery Charger



Charge an extra battery for high volume environments or while on the road (includes spare battery)

Spare Battery



Large capacity battery lasts all day

Carrying Case



Nylon cover with shoulder strap for added protection and carrying convenience

Transporting Your Business to a Whole New Level





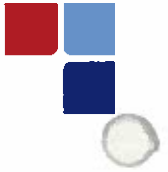
A black handheld barcode scanner, identified by the 'Optimum' logo on its screen and the 'HYPERCOM' brand name above it. The device features a numeric keypad with white buttons (0-9, *, #) and several blue function buttons labeled 'F1' through 'F12'. A red 'Cancel' button is located on the left side, and a green 'Enter' button is at the bottom. The scanner has a small display screen at the top and a barcode window below it.

- Portable payment processing, great for delivery, kiosks and much more. Eliminates the need for a phone line or Internet connection
- Connectivity through the T-Mobile® GPRS data network ensures extensive, secure wireless coverage
- Compact design and long battery life provide maximum portability, ensuring you are able to process payments when and where needed

The Hypercom® Optimum M4230 is a mobile payment solution that ensures you are able to quickly, efficiently and securely process transactions anywhere, any time; it's an ideal solution for businesses on the go. The compact ergonomic design provides easy transport and the extra long life battery ensures that you have enough power to get through even the busiest day. It can effectively process credit and debit cards, gift cards, dynamic currency conversion (DCC) and electronic benefits transfer (EBT). The Optimum M4230 makes mobile processing quick and easy while meeting today's stringent payment industry security standards.



Hypercom® Optimum M4230



Portability Means Flexibility

- Accept card transactions anywhere, anytime – instantly add an extra lane during sales, busy holiday seasons or peak store hours
- Offer additional points of sale whenever you need them – home delivery, trade shows, flea markets, vendor stands and kiosks
- Charging dock ensures the terminal is fully charged between uses without tethering the terminal with cords and provides dial communications back up

Wireless You Can Count On

- Extensive wireless coverage through T-Mobile's GPRS Data network. Coverage can be checked on the data tab at: <http://www.t-mobile.com/coverage/pcc.aspx>
- Lightning-fast transaction speed – transactions processed in 3 to 5 seconds
- Long life battery supports over 200 transactions in a single charge, providing enough power to get through the day
- Meets the latest payment industry security standards

Features That Complete the Package

- Supports multiple payment types including: credit, PIN debit, electronic gift card, Electronic Benefits Transfer and Dynamic Currency Conversion
- Where eligible, supports "No Signature Required Program" for faster credit card acceptance
- Supports up to 10 different Merchant IDs for use across multiple divisions or businesses

Easy to Use Design

- ATM-style keyboard is intuitive, simplifying training
- Bright, white backlit display offers a clear sharp image for maximum visibility in any lighting or environment
- Sureload® thermal printer offers drop-in paper loading virtually eliminating paper jams and supports large paper rolls for more transactions between paper changes
- Compact design and integrated PIN pad allow you to easily hand over the device to customers for secure PIN entry

Optional Accessories

Car Charger



Power your terminal or charge your battery on the fly

Spare Charging Dock



Easily charge your battery between uses without tethering the terminal to a cord. Also provides dial back up

Spare Battery



An extra battery for high volume environments or while on the road

Carrying Case

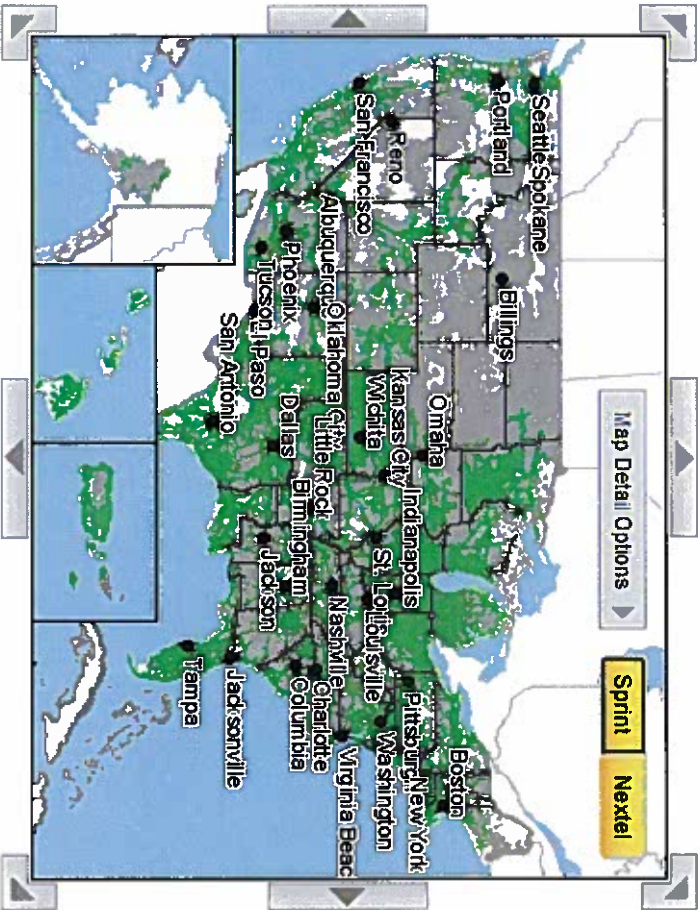


For added protection and carrying convenience

Payments on the Go



Sprint Coverage



Voice coverage:

En Español

☒ Sprint coverage

☒ Sprint coverage - signal strength varies

☐ Roaming

☐ Limited access to make and receive calls.

☐ No Coverage

Voice coverage:

En Español

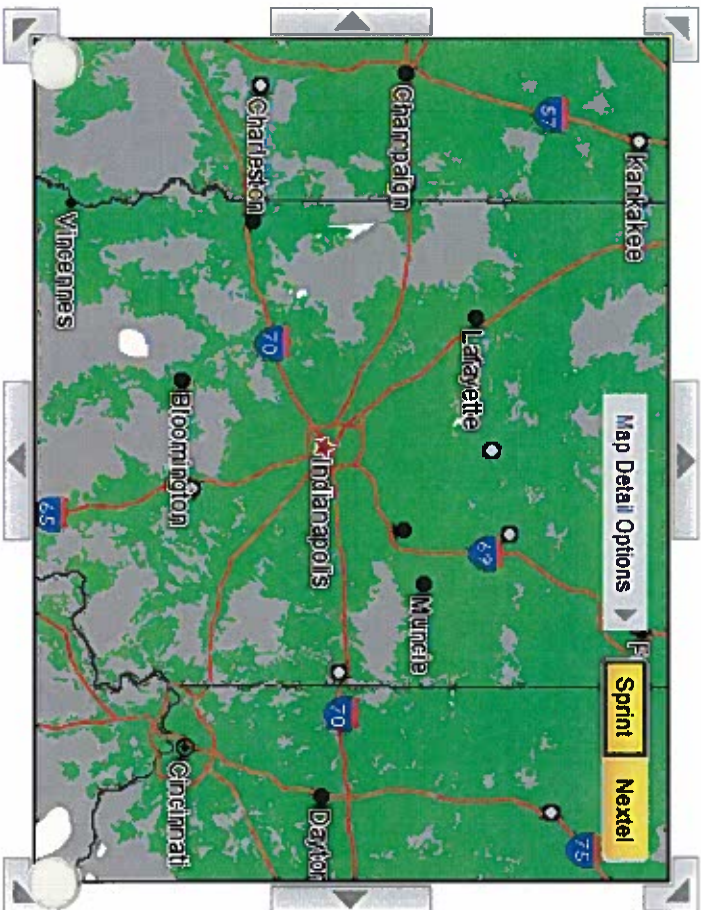
☒ Sprint coverage

☒ Sprint coverage - signal strength varies

☐ Roaming

☐ Limited access to make and receive calls.

☐ No Coverage

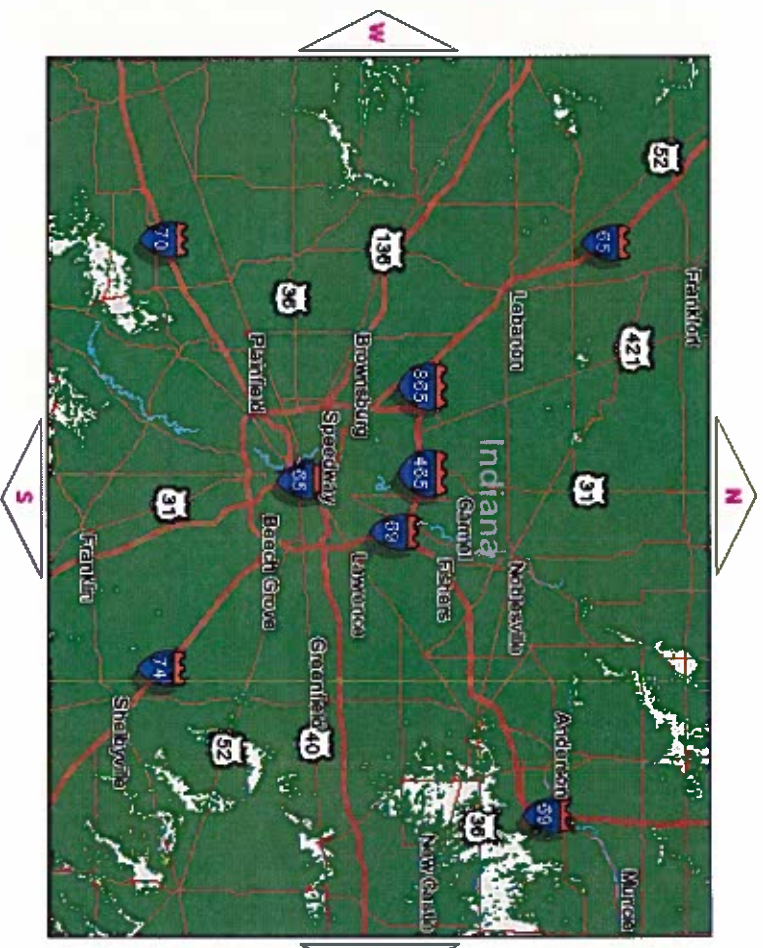
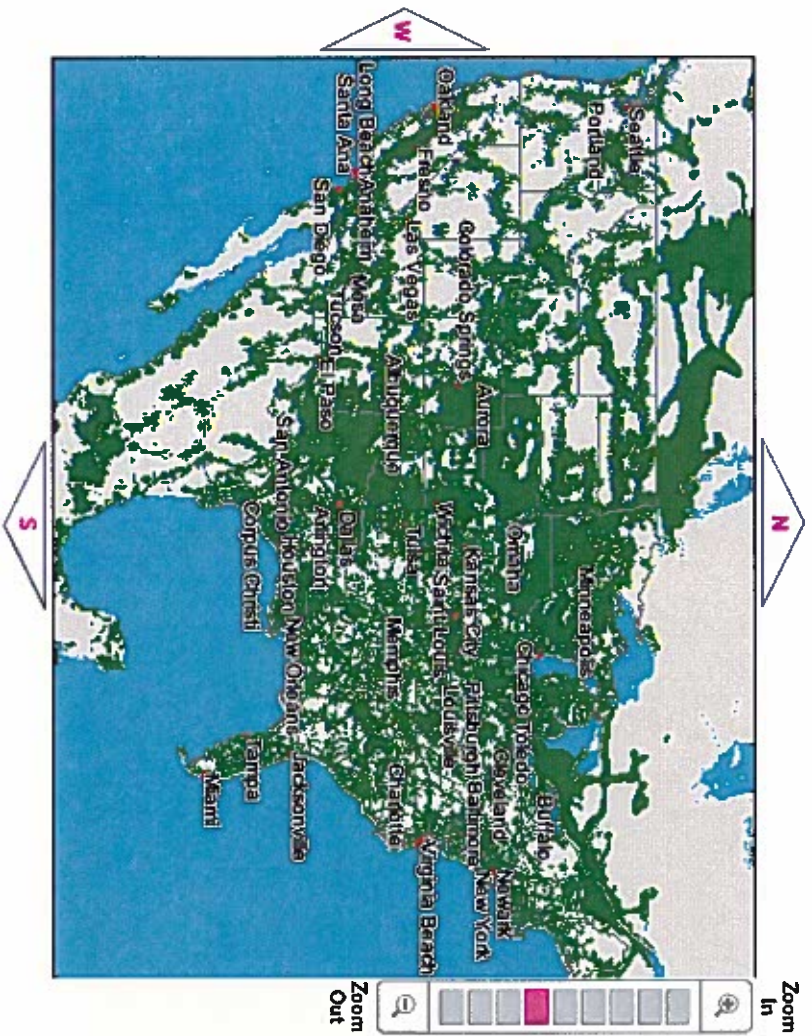




T-Mobile Coverage

Mobile Voice Coverage

T-Mobile Voice Coverage







PAYMENT DEVICE PROCESSING AGREEMENT

This Payment Device Processing Agreement ("Agreement") is entered into as of the Effective Date by and among the entity identified below as the Merchant (together with any affiliated entities listed on Schedule B to the Agreement), referred to collectively as the "Merchant," **Elavon, Inc.** ("Elavon") and **Member**, as designated on the Merchant Application, and includes the following Terms of Service (the "TOS") and all Schedules and other attachments to the Agreement, and all Schedules and other attachments to the Agreement as may be added from time to time, each of which is incorporated in full by this reference. The Agreement governs the Merchant's receipt and use of the Processing Services.

PAYMENT DEVICE PROCESSING SERVICES ELECTED BY MERCHANT. Merchant elects the following Payment Device Processing Services as described in the Agreement (including all applicable Schedules) and subject to the additional terms and conditions of the applicable provisions of the Merchant Operating Guide (the "MOG"):

- ☒ TOS, General Provisions and the MOG
- ☒ Schedule A, Schedule of Fees
- ☒ Schedule B, Affiliated Entities
- ☒ Schedule C, Merchant Application (Large Relationship)
- ☐ Substitute Form W-9 (required for U.S. entities)
- ☐ Substitute Form W-8BEN (required for non-U.S. entities)

Payment Device Processing Services Available to Merchants Generally (check desired Processing Services):

- ☐ Credit Card Services
- ☐ Debit Card (signature-based) Services
- ☐ Debit Card (PIN-based) Services
- ☐ Bill Payment (Pinless Debit) Services
- ☐ DCC Services
- ☐ Wireless Services
- ☐ Contactless Services
- ☐ Schedule D, Electronic Gift Card Services
- ☐ Schedule E, Electronic Check Services
- ☐ Schedule J, Processing Services for Convenience Fees
- ☐ Schedule K, Enterprise Billing Solutions Services
- ☐ Schedule N, Internet PIN-Based, Debit Card Services

Payment Device Processing Services Available to Merchants Operating in Certain Merchant Categories (check desired Processing Services):

- ☐ EBT Services
- ☐ Hospitality Services
- ☐ No Signature Required Program Services
- ☐ Schedule F, Petroleum Services
- ☐ Schedule I, Processing Services for Government Entities and Institutions

Payment Device Processing Services Available to Merchants Operating in Certain Jurisdictions (check desired Processing Services):

- ☐ Schedule G, Processing Services in Canada
- ☐ Schedule H, Processing Services in Puerto Rico

IN WITNESS WHEREOF, the parties hereto have executed the Agreement.

_____,
on behalf of itself and each of the affiliated entities
identified on Schedule B (the "MERCHANT"):

By: _____

Name: _____

Title: _____

ELAVON, INC.

By: _____

Name: _____

Title: _____

Date: _____

("Effective Date")

MEMBER

By: _____

Name: _____

Title: _____

TERMS OF SERVICE

Section A - General Provisions Applicable to All Services

1) DEFINITIONS; RULES OF CONSTRUCTION.

Capitalized terms used in the Agreement and in any applicable Schedule shall have the meanings ascribed to such terms in the Glossary set forth in Section B of this TOS or in such Schedules. All Schedules are expressly incorporated in their entirety and made a part of the Agreement. Captions in the Agreement and in the attached Schedules are for convenience only and do not constitute a limitation of the terms in the Agreement. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The word "day" shall mean "calendar day", unless specifically stated otherwise. In the event of a conflict between the terms of Section A - General Provisions, and any applicable Schedule, the terms of the applicable Schedule shall prevail.

2) ACCEPTANCE OF PAYMENT DEVICES.

Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices and Processing Services it will agree to accept as a form of payment from its Customers by selecting the applicable Processing Services on page 1 of the Agreement and/or on the appropriate Schedule. The terms and conditions for the acceptance of the applicable Payment Devices and Merchant's use of the Processing Services are set forth in the Agreement and in the Merchant Operating Guide (the "MOG"), incorporated herein by this reference and located at our website https://www.merchantconnect.com/CWRWeb/pdf/MOG_Eng.pdf. Each Schedule to the Agreement shall be governed by the TOS and the applicable provisions of the MOG, as well as by the terms set forth in the Schedule.

3) TRANSACTIONS.

- a) **Merchant Compliance.** Merchant must comply with all the requirements under the Agreement. Merchant must also comply with the procedures set forth in the MOG and any other guides, manuals, or rules provided in writing by Elavon from time to time.
- b) **Settlement of Transactions.** Subject to the other provisions of the Agreement and subject to Merchant's compliance with the terms of the Agreement and the Payment Network Regulations, Elavon and Member will process Transactions daily, and if Merchant maintains its DDA with Member, provisional credit for Transactions (less recoupment of any Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member under the Agreement) may be available as soon as the next

banking day after the banking day on which Elavon and Member process the Transactions. Regardless of where Merchant maintains its DDA, Merchant acknowledges and agrees that Elavon and Member may use either "direct" (ACH debit authority pursuant to which Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member under the Agreement are debited from the DDA) or "net" (pursuant to which Chargebacks, returns, adjustments, fees (subject to Section (A)(5)(a)), fines, penalties, assessments from the Payment Networks and other amounts due to Elavon or Member under the Agreement are netted from Transaction proceeds) methods to recover any amounts owed by Merchant to Elavon or Member under the Agreement. To the extent required, Merchant authorizes and appoints Elavon or Member to act as Merchant's agent to collect Transaction amounts from the Customer, the Issuer or the Customer's financial institution.

i) **Deposits.** Merchant agrees that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Merchant acknowledges that its obligation to Elavon and Member for all amounts owed under the Agreement arises out of the same transaction as Elavon's and Member's obligation to deposit funds to the DDA and such amounts are owed in the ordinary course of business.

ii) **Provisional Credit.** Merchant acknowledges that all credits for funds provided to it are provisional and subject to reversal in the event that Elavon and Member do not receive payment of corresponding settlement amounts from the Payment Networks. Merchant further acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. Merchant authorizes Elavon or Member to initiate reversal or adjustment (debit or credit) entries and to initiate or suspend such entries in accordance with the Agreement as may be necessary to grant or reverse provisional credit for any Transaction. Further, Elavon may delay Merchant-issued Cardholder credits for up to five (5) business days for accounting verification. Cardholder credits issued by Merchant to PIN-Debit Cards will not be subject to this delay.

- iii) **Chargebacks.** Merchant agrees to accept for Chargeback, and will be liable to Elavon and Member in the amount of any Transaction disputed by the Cardholder or Issuer for any reason under the Payment Network Regulations. Merchant authorizes Elavon and Member to offset from funds due Merchant or to debit the DDA or the Reserve Account for the amount of all Chargebacks. Merchant will fully cooperate with Elavon and Member in complying with the Payment Network Regulations regarding all Chargebacks.
 - iv) **Original Transaction Receipts.** Under no circumstances will Elavon or Member be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Elavon and Member.
 - c) **DDA and ACH Authorization.** Merchant will establish and maintain with Member (or with another ACH participating financial institution) one or more DDAs to facilitate payment for Transactions. Merchant will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other payments due under the Agreement. Merchant irrevocably authorizes Elavon, Member, and their respective authorized vendors and agents who provide services under the Agreement at Merchant's request, to initiate ACH debit and credit entries to the DDA or the Reserve Account for any products or services requested by Merchant in order to make payments to or collect payments from Merchant due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Merchant's obligations to Elavon and Member have been paid in full. Elavon and Member have the right to delay, within their reasonable discretion, crediting the DDA with funds related to Transactions in order to investigate any Transactions related to suspicious or fraudulent activity or funds for Transactions for which Elavon or Member have not received funding from the applicable Payment Networks. Elavon and Member will endeavor to investigate or process any delayed Transactions expeditiously and will endeavor to notify Merchant if any Transactions are delayed for more than forty-eight (48) hours. Elavon has the right to rely upon written instructions submitted by Merchant requesting changes to the DDA. In the event Merchant changes the DDA, the ACH debit and credit authorization established hereunder will apply to the new account and Merchant shall provide Elavon and Member such information regarding the new DDA as they deem necessary to effect payments to and from the DDA as provided under the Agreement. It may take Elavon up to ten (10) business days after Elavon's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA.
 - d) **Depository Institution.** Merchant authorizes its depository institution to grant Elavon and/or Member access to any and all information or records regarding the DDA reasonably requested by Elavon and/or Member to debit or credit the DDA and to otherwise exercise their rights under the Agreement with respect to the DDA.
 - e) **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Elavon, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. Merchant must promptly examine all statements relating to the DDA and promptly notify Elavon and Member in writing of any errors in the statement Merchant received from Elavon. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by Elavon within forty-five (45) days of the date of the Elavon statement containing the asserted error. If Merchant fails to provide such notice to Elavon within said forty-five (45) days, Elavon and Member shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant may not make any claim against Elavon or Member for any loss or expense relating to any asserted error for forty-five (45) days immediately following Elavon's receipt of Merchant's written notice. During that forty-five (45) day period, Elavon (i) will be entitled to investigate the asserted error, and Merchant shall not incur any cost or expense in connection with the asserted error without notifying Elavon, and (ii) notify Merchant of its proposed resolution of the asserted error.
- 4) **SECURITY INTERESTS, RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.**
 - a) **Security Interests.**
 - i) **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. Merchant grants to Elavon and Member a security interest in and lien upon: (a) all funds at any time in the Reserve Account, regardless of the source of such funds, and (b) all funds underlying present and future Transaction Receipts in process by Member or Elavon (collectively, the "Secured Assets"). These security interests and liens will secure all of Merchant's obligations under the Agreement. Elavon and Member may execute this security interest, without notice or demand of any kind, by making an immediate

withdrawal or by restricting Merchant's access to the Secured Assets.

- ii) **Perfection.** Upon request of Elavon or Member, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest. Merchant represents and warrants that no other Person has a security interest in the Secured Assets. With respect to such security interests and liens, Elavon and Member will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Elavon and Member written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and Elavon and Member are not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Elavon or Member. If Merchant fails to execute control agreements or other documents to evidence or perfect the security interest or lien within ten (10) days of Elavon's or Member's request, Merchant authorizes and appoints Elavon as Merchant's attorney in fact to sign Merchant's name to any control agreement or other documents used for the perfection of any security interest or lien granted hereunder.

b) Reserve Account.

- i) **Establishment.** Elavon may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing security and a source of funds to pay Elavon and Member for any and all amounts that may be owed by Merchant hereunder. Elavon and Member shall have sole control of the Reserve Account.
- ii) **Reserve Amount.** The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the product is shipped to the Cardholder (if the goods are being shipped) or the date the Cardholder receives the product or service. Further, for purposes of this calculation, Elavon

will determine, in its sole reasonable discretion, the applicable period considering factors such as Merchant's Transaction volume and seasonality.

(A) **Reserve Event.** The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equals or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed one percent (1%) of the total dollar value of incoming items to Elavon, (c) Elavon's reasonable belief that a Merchant not approved by Elavon to engage in delayed delivery transactions has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against Merchant, (e) termination of the Agreement for any reason or the occurrence of an event listed in Section (A)(12)(b)(ii)(B) or (C) giving Elavon or Member the right to terminate the Agreement, (f) nonpayment of amounts owed by Merchant to Elavon or Member, (g) fines or assessments imposed or reasonably expected to be imposed by the Payment Networks, (h) the occurrence of a material adverse change in Merchant's financial condition, (i) assignment of the Agreement by Merchant in violation of Section 15(e), and (j) revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or any other Alternate Security provided in connection with the Agreement, if applicable.

- iii) **Funding.** Elavon and Member may fund the Reserve Account (in each case up to the Reserve Amount) by any one or more of the following means.

- (A) Elavon and Member may require Merchant to deposit funds into the Reserve Account;
- (B) Elavon and Member may debit the DDA; and/or
- (C) Elavon and Member may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant.

- iv) **Use of Funds in Reserve Account.** Elavon or Member may, without notice to Merchant, apply funds in the Reserve Account against any outstanding amounts Merchant owes under the Agreement. Also, Elavon or Member may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to

- Elavon or Member. Further, Merchant agrees that Elavon or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.
- v) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account, and shall be used only to pay amounts due to Elavon and Member (except as otherwise provided in the Agreement), until the Merchant has paid in full all amounts owing or that may be owed under the Agreement, including all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and any other payments due under the Agreement. In no event shall Merchant be entitled to a return of any funds remaining in the Reserve Account before two hundred seventy (270) days following the effective date of termination of the Agreement. Notwithstanding the foregoing, if Elavon and Member determine that the Reserve Event that gave rise to the establishment of the Reserve Account has been sufficiently cured, Elavon and Member may, in their sole discretion, terminate the Reserve Account and/or release funds from the Reserve Account prior to the termination of the Agreement.
 - vi) **Alternate Security.** In lieu of or in addition to establishing and funding a Reserve Account, Elavon may, in its sole and absolute discretion, accept an alternative form of security ("Alternate Security") for the purpose of providing a source of funds to pay Elavon and Member for any and all amounts owed by Merchant. Elavon retains the right, at any time, to reject Alternate Security previously accepted by Elavon and/or to require funding of a Reserve Account so that the amount of funds held in a Reserve Account, taken together with amounts represented by any Alternate Security accepted by Elavon, equal the Reserve Amount.
 - c) **Recoupment and Set-off.** Elavon and Member have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them hereunder from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe Merchant under the Agreement. Merchant acknowledges that in the event of a Bankruptcy Proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code Section 362 to Elavon and/or Member hereunder, Elavon and Member may require the creation of a Reserve Account and either of them shall have the right to offset against the Reserve Account for any and all obligations Merchant may owe to Elavon and Member, without regard to whether the obligations relate to Transactions initiated or processed before or after the initiation of the Bankruptcy Proceeding.
 - d) **Remedies Cumulative.** The rights conferred upon Elavon and Member in this section are not intended to be exclusive of each other or of any other rights and remedies of Elavon and Member under the Agreement, at law or in equity. Rather, each and every right of Elavon and Member under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.
- 5) **PROCESSING SERVICES; FEES; OTHER AMOUNTS OWED; TAXES.** Elavon and Member will provide Merchant with Processing Services in accordance with the Agreement. Merchant will compensate Elavon and Member for Processing Services as indicated on Schedule A, Schedule of Fees, and in any other Schedules executed by Elavon, Member and Merchant.
- a) **Fees.** Merchant will pay Elavon and Member fees in the ordinary course of business for all Processing Services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) or schedules provided by Elavon and Member in writing to Merchant. Such fees will be calculated and debited from the DDA or the Reserve Account once each day or month for the previous day's or month's activity as applicable, or will be deducted from the funds due Merchant under the Agreement.
 - b) **Research.** In addition, Merchant will pay Elavon at its standard rates for research as set forth on Schedule A including, but not limited to, research required to respond to any third party or government subpoena, levy, garnishment or required reporting on Merchant's account.
 - c) **Change of Fees.** The fees set forth in the Agreement and any additional application or set up form will not be amended by Elavon for the Initial Term of the Agreement except as provided in Schedule A or to pass through to Merchant increases in interchange, assessments, or fees imposed by a third party. Notwithstanding the previous sentence, the Card Processing Fees set forth in Section III of Schedule A may be adjusted during the Initial Term or any Renewal Term in Elavon's or Member's discretion, without further consent or agreement from Merchant, to pass through any new fees imposed upon Elavon or Member by any third parties (including any Payment Network) in connection with the Processing Services.
 - d) **Other Amounts Owed.** Merchant will promptly pay Elavon or Member any amount incurred by Elavon or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties, assessments (including all fines, penalties, or assessments by the Payment Networks as a result of Merchant's Transaction processing), and any other payments

due under the Agreement. Elavon or Member may offset these amounts from funds otherwise owed by Elavon or Member to Merchant or may debit these amounts from Merchant's DDA or Reserve Account by ACH. In the event such offset or ACH debit does not fully reimburse Elavon or Member for the amount owed, Merchant will promptly pay Elavon or Member such amount upon demand. Elavon will charge interest on all uncollected amounts owed to Elavon or Member that are more than thirty (30) days past due at a rate equal to the lesser of (i) the product of the uncollected amounts and the then-current Federal Funds Rate plus 10% (calculated and computed on the basis of a 365-day year), or (ii) the maximum daily rate of interest permitted under applicable law.

- e) **Taxes.** Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement excluding the income taxes attributable to Elavon or Member. If Merchant is a tax-exempt entity, Merchant will provide Elavon and Member with an appropriate certificate of tax exemption.

6) ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.

- a) **Accuracy of Information.** Merchant must promptly notify Elavon in writing of any material changes to the information provided in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services, the form of entity (e.g., partnership, corporation, etc.), change in control, material changes to the type of goods and services provided and/or payments accepted, and how Transactions are completed (e.g., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. Merchant will promptly provide any additional information reasonably requested by Elavon. Elavon has the right to rely upon written instructions submitted by Merchant to request changes to Merchant's business information. Merchant may request written confirmation of Elavon's consent to the changes to the Merchant's business information.

b) Indemnification.

- i) **By Merchant.** Merchant will be liable for and indemnify, defend, and hold harmless Elavon, Member and their respective employees, officers, directors, and agents against all claims by third parties for losses, damages, liabilities or expenses, including all reasonable attorneys' fees and other costs and expenses paid or incurred by Member and/or Elavon, any

Transaction processed under the Agreement, any breach by Merchant of the Agreement, Merchant's negligence, gross negligence or willful misconduct, any action taken by Elavon or Member with respect to the DDA or Reserve Account in accordance with the Agreement, or any Merchant Bankruptcy Proceeding, but excluding claims to the extent attributable to Elavon's or Member's negligence, willful misconduct, or breach of the Agreement.

- ii) **By Elavon.** Elavon will be liable for and indemnify, defend, and hold harmless Merchant and its employees, officers, directors, and agents against all claims made by third parties for losses, damages, liabilities or expenses arising out of Elavon's breach of the Agreement, negligence, gross negligence, or willful misconduct, but excluding claims to the extent attributable to Merchant's negligence, gross negligence, willful misconduct, or breach of the Agreement.
- c) **Limitation of Liability.** Merchant acknowledges that fees for the Processing Services provided to Merchant by Elavon and Member are very small in relation to the funds advanced to Merchant for Transactions and consequently Elavon's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on Elavon's or Member's liability that may be provided elsewhere, any liability of Elavon and Member under the Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the lesser of (a) the fees paid by Merchant to Elavon and Member during the last three (3) months, exclusive of fees and variable costs incurred by Elavon and Member to process Transactions, such as Interchange costs, assessments, and fees imposed by a third party or, (b) fifty thousand dollars (\$50,000). In no event will the parties, or their agents, officers, directors, or employees be liable to any other party to the Agreement for indirect, exemplary, punitive, special, or consequential damages.
- d) **Performance; Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ELAVON AND MEMBER MAKE NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PROCESSING SERVICES, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. ELAVON AND MEMBER DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No party hereto shall be liable for any failure or delay in its performance of

the Agreement if such failure or delay arises for reasons beyond the control of such party and without the fault or negligence of such party.

7) REPRESENTATIONS AND WARRANTIES; COVENANTS.

a) Merchant Representations and Warranties. Merchant represents and warrants to Elavon and Member the following as of the Effective Date:

- i) **Information.** Merchant is validly existing and duly organized under the laws of the jurisdiction in which it was formed with all necessary authority, qualifications, licenses and registrations necessary to conduct its business, in all jurisdictions where Merchant conducts business, in compliance with all Laws and Payment Network Regulations. All written information provided in the Merchant Application, in the bid process if applicable, the assumptions in Schedule A or any other document submitted to Elavon or Member is true and complete and properly reflects the business, financial condition and ownership of Merchant in all material respects.
- ii) **Authority and Power.** Merchant and the person signing the Agreement on Merchant's behalf have the power to execute and perform the Agreement. The person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in Schedule B to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by Elavon to carry out the Agreement. Further, the signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which Merchant is subject.
- iii) **MasterCard MATCH™ System and Consortium Merchant Negative File.** Merchant has never been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), or been named to the Consortium Merchant Negative File maintained by Discover or, if it has, it has disclosed this fact to Elavon in writing.
- iv) **No Litigation.** There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened that would reasonably be expected to materially impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would materially and adversely affect Merchant's financial condition or operations.

b) Merchant Covenants. Merchant covenants the following to Elavon and Member during the Initial Term and any Renewal Term:

- i) **Compliance with Laws and Payment Network Regulations.** Merchant will comply with all Laws and Payment Network Regulations.
- ii) **Business Use.** Merchant is obtaining and using the Processing Services from Elavon and Member for business purposes only and to facilitate lawful business Transactions between Merchant and its Customers. Merchant will not submit Transactions for processing to Elavon or Member for any businesses, materially different products, or methods of selling other than those set forth in the Merchant Application without the prior written consent of Elavon. Merchant also acknowledges that the DDA into which debits and credits are made is being used for lawful business purposes only.
- iii) **Transactions.** To the best of Merchant's knowledge, all Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the payment to Merchant or a return or adjustment related to such payment. No Transaction involves a Cardholder obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing by Elavon. All Transactions will be accepted at entities properly identified to Elavon and Member on Schedule B attached hereto.
- iv) **Responsibility for Actions.** Merchant is responsible for any violations of this Agreement that result from the actions of or failure to act by Merchant's officers, directors, employees, agents, Value Added Servicers, business invitees, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to information related to Transactions from Merchant or access to systems under Merchant's control, but excluding all actions or failures to act to the extent attributable to Elavon's or Member's breach of the Agreement, negligence or willful misconduct.

c) Elavon and Member Representations and Warranties. Elavon and Member, each on their own behalf and not on behalf of the other, represent and warrant to Merchant the following as of the Effective Date of the Agreement:

- i) **Information.** Elavon is a corporation validly existing and organized under the laws of the State of Georgia. Member is a banking association validly existing and organized in the United States.
- ii) **Corporate Power.** Elavon, Member and the persons signing the Agreement on behalf of

each of them have the power to execute and perform the Agreement. The persons executing the Agreement are duly authorized to bind Elavon and Member, as applicable, to all provisions of the Agreement and such persons are authorized to execute any document and to take any action on behalf of Elavon and Member, respectively, which may be required to carry out the Agreement. Further, the signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which they are respectively subject.

iii) **No Litigation.** There is no action, suit, or proceeding pending, or to Elavon's or Member's knowledge threatened, which if decided adversely would impair Elavon's or Member's ability to carry on their business substantially as now conducted or which would adversely affect Elavon's or Member's financial condition or operations.

d) **Elavon and Member Covenants.** Elavon and Member, each on their own behalf and not on behalf of the other, covenants to Merchant the following during the Initial Term and any Renewal Term:

i) **Compliance with Laws and Payment Network Regulations.** Elavon and Member will comply with all Laws and Payment Network Regulations including the requirements of the Payment Card Industry ("PCI") Data Security Standard, as applicable to them and their respective systems, for the Processing Services provided under the Agreement. The Merchant may review Elavon's current PCI compliance status on the Payment Network websites as available.

ii) **Responsibility for Actions.** Elavon and Member are responsible for any violations of this Agreement that result from the actions of or failure to act by their officers, directors, employees and agents; but excluding actions or failures to act to the extent attributable to Merchant's breach of the Agreement, negligence or willful misconduct.

8) AUDIT AND INFORMATION.

a) Audit.

i) **Elavon or Member Audit.** In the event that Elavon or Member reasonably suspects that they are subject to a financial or reputational risk due to Merchant's actions or omissions, Merchant authorizes Elavon and Member to perform an audit or inspection of Merchant's operations to confirm compliance with the Agreement upon reasonable advance notice and at Elavon's or Member's expense. Merchant agrees to cooperate, in good faith, with any such audit conducted by Elavon or Member.

ii) **Data Compromise, Security, and Payment Network Audit.** In addition to Merchant's obligations under Section 13(e)(i), in the event of a known or suspected data compromise, security incident, the occurrence of suspicious activity, or otherwise if required by the Payment Networks, Merchant will obtain, at the request of Elavon, Member or any Payment Network, and submit a copy of a forensic audit from a qualified incident response assessor of the information security of Merchant's business at Merchant's expense. Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's operations to confirm compliance with the Payment Network Regulations.

b) Information.

i) **Authority.** Merchant authorizes Elavon and Member to make, upon receipt of the Merchant Application and from time to time, any business credit or other inquiries they consider reasonably necessary to review the Merchant Application or continue to provide Processing Services under the Agreement. Merchant also authorizes any Person or credit reporting agency to compile information to answer those business credit inquiries and to furnish that information to Elavon.

ii) **Financial Information.** Upon the request of either Elavon or Member, Merchant will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by Merchant. Within one hundred twenty (120) days after the end of each fiscal year, Merchant will furnish Elavon and Member, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year, each audited as provided above. Merchant shall also provide Elavon and Member such interim financial statements and other information as Elavon or Member may request from time to time. Notwithstanding the foregoing, Merchant shall not be obligated to provide financial statements or similar information other than those included in Merchant's filings with the Securities and Exchange Commission so long as Merchant remains registered and obligated to file financial statements (including annual reports on Form 10-K and quarterly reports on Form 10-Q) pursuant to the Securities Exchange Act of 1934, as amended.

iii) **Merchant Information.** Merchant agrees that any information about Merchant or any of its principals, affiliates or agents that is provided to Elavon or Member on the Merchant Application or otherwise obtained by Elavon or Member in connection with the Agreement may

be (A) used by Elavon and Member, and their respective affiliates, agents and referral partners, (i) in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services, or (ii) for administrative purposes; (B) disclosed and shared for reporting purposes to credit rating agencies, in accordance with the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (C) used or disclosed in the course of any actual or potential sale, reorganization or other change to Elavon's or Member's business; (D) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (E) retained for such periods of time as required by Elavon and Member to perform their obligations and exercise their rights under the Agreement.

c) **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. Accordingly, Merchant must provide certain information and identifying documents to allow Elavon and Member to identify Merchant.

9) **FRAUD MONITORING.** Merchant is solely responsible for monitoring its Transactions. Elavon and Member are under no duty to monitor Merchant's Transactions for fraudulent or other suspicious activity.

10) BUSINESS CONTINUITY.

a) **Merchant.** Merchant is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by Elavon. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions and will provide such information and data to Elavon or Member upon request in order to reconstruct any information or data lost due to any malfunction of Merchant's or Elavon's or Member's systems. Elavon is under no duty to recreate lost Transactions or Transaction Receipts unless such loss results from Elavon's breach of the Agreement.

b) **Elavon and Member.** Elavon and Member are required, pursuant to federal banking regulations, to establish, maintain, and test an effective and comprehensive business continuity plan ("BCP"). Elavon and Member maintain BCPs that are commercially reasonable within the industry for the Processing Services. Elavon and Member will continue to adhere to their respective BCPs and will modify those plans from time to time to meet the objectives and requirements of their respective businesses.

11) THIRD PARTIES.

a) **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Elavon previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will indemnify and hold harmless Elavon and Member from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including Value Added Servicers. Neither Elavon nor Member is responsible for any Value Added Servicer, nor are they responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.

b) **Third Party Contractors.** Merchant acknowledges and understands that Elavon or Member may use the services of third party service providers in connection with the performance of their obligations under the Agreement, including any Schedule to the Agreement. Except as otherwise provided in the Agreement, Elavon and Member shall be responsible for the performance of their obligations hereunder notwithstanding any use of or delegation of any responsibility to a third party service provider.

12) TERM AND TERMINATION.

a) **Term.** Unless terminated as set forth below, the Agreement, including all Schedules hereto executed as of or following the Effective Date, will remain in effect for the Initial Term, as defined on Schedule A, Schedule of Fees, following the Effective Date set out on page 1 of the Agreement. Thereafter, the Agreement, including all Schedules thereto, will automatically renew for successive Renewal Terms, as defined on Schedule A, Schedule of Fees, unless terminated as set forth below. If Merchant processes Transactions beyond the Initial Term or Renewal Term, then the terms of the Agreement shall govern such Transaction processing.

b) **Termination.**

i) **By Merchant.**

(A) The Agreement may be terminated by Merchant effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to

Elavon at least ninety (90) days prior to the expiration of the then current term.

- (B) The Agreement may be terminated by Merchant if any of the following conditions remain uncured thirty (30) days after Merchant provides Elavon and Member written notice of the existence of the condition:

- (1) Elavon has failed to pay Merchant an undisputed amount owed to Merchant under the Agreement; or
- (2) Elavon or Member has failed to perform a material obligation under the Agreement.

ii) **By Elavon or Member.**

- (A) The Agreement may be terminated by Elavon or Member effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to Merchant at least ninety (90) days prior to the expiration of the then current term.

- (B) The Agreement may be terminated by Elavon or Member if, after providing thirty (30) days written notice, any of the following conditions remain:

- (1) The occurrence of Excessive Activity.
- (2) The acceptance of Card Not Present or Convenience Fee Transactions without proper disclosure to Elavon and Member in the Agreement or an amendment to the Agreement.
- (3) The failure to pay Elavon or Member any amount Merchant owes Elavon or Member.
- (4) The failure by Merchant to perform a material obligation of the Agreement.

- (C) The Agreement may be terminated by Elavon or Member immediately upon the occurrence of one or more of the following:

- (1) The occurrence of a material adverse change in Merchant's financial condition.
- (2) The garnishment or attachment of Merchant's deposit accounts with Member, Alternate Security, the DDA, the Reserve Account, or any of Merchant's property in the possession of Elavon or Member.
- (3) The commencement of a Bankruptcy Proceeding by or against Merchant.
- (4) Any representation, warranty or covenant by Merchant is false or misleading in any material respect as of the date made, or becomes false or misleading in any material respect at

any time during the term of the Agreement.

- (5) Any Payment Network requires Elavon or Member to terminate the Agreement or cease processing transactions for Merchant.
- (6) Any change, not approved by Elavon, that constitutes a material change in the types of goods and services Merchant sells or in the methods by which Merchant sells them, or any change that results in Merchant's violation of Elavon's or Member's underwriting policy.
- (7) Assignment of the Agreement or a change in control of Merchant without Elavon's written consent.
- (8) Revocation, termination or non-renewal of any guaranty, indemnity agreement, letter of credit or other Alternate Security executed in connection with the Agreement, if applicable.

The parties' rights of termination under the Agreement are cumulative. A party may exercise its termination rights with respect to an individual Schedule to the Agreement or the participation of any affiliate without terminating other Processing Services or Schedules, provided that any termination of the Agreement in whole shall automatically terminate all related Processing Services and Schedules. A specific right of termination in this section shall not limit any other right of the party to terminate the Agreement or any Schedule expressed elsewhere.

c) **Notice of Termination.**

- i) Notice of termination by Merchant, Elavon, or Member must be given in writing. Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant's account with Elavon may take up to thirty (30) days following Elavon's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by Elavon following termination by either Merchant or Elavon in the Initial or any Renewal Term, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.

d) **Action upon Termination.**

- i) **Accounts.** All obligations of a party regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until Merchant pays all amounts Merchant owes Elavon or Member or for which Merchant is

liable under the Agreement. Merchant must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other amounts due under the Agreement for a reasonable time, but in any event, not less than 180 days from termination.

- ii) **Equipment.** If Merchant's equipment is leased, Merchant is obligated to honor the terms and conditions of Merchant's leasing contract. If Merchant's equipment is owned or supplied by Elavon, Merchant must return all equipment to Elavon and pay Elavon any amounts Merchant owes for such equipment within thirty (30) days.
- iii) **Early Termination Fee.** If Merchant terminates the Agreement before the end of the Initial Term, except for termination pursuant to Section (A)(12)(b)(i)(B), Merchant will immediately pay Elavon and Member, as liquidated damages, an early termination fee as specified on Schedule A, Schedule of Fees. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. In addition to the foregoing, if Merchant terminates the Agreement during the Initial Term, other than a termination under Section (A)(12)(b)(i)(B), any incentives, discounts or credits granted by Elavon to Merchant, as reflected on Schedule A, Schedule of Fees, will be immediately due and payable to Elavon in accordance with Schedule A.

13) COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™ AND CONSORTIUM MERCHANT NEGATIVE FILE.

- a) **Compliance with Laws and Payment Network Regulations.** Merchant, Elavon and Member agree to comply with all applicable Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from or charges to a consumer account, as applicable, and with any policies and procedures provided by Elavon or Member. Merchant, Elavon and Member further agree to comply with all Laws applicable to the selected Processing Services, including without limitation, Laws related to: (i) Payment Devices; (ii) electronic fund transfers; (iii) confidential treatment of information; and (iv) the Fair and Accurate Credit Transactions Act of 2003 (FACTA), including its requirements relating to the content of Transaction Receipts provided to Cardholders. Merchant will execute and deliver to Elavon and Member all documents they may from time to time reasonably deem necessary to verify Merchant's compliance with this provision.

- b) **Privacy Laws.** In addition to Section (A)(14)(b), each party hereto must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information and in a manner that complies with applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act, the federal Gramm-Leach-Bliley Act, FACTA or other applicable privacy laws.
- c) **MATCH™ and Consortium Merchant Negative File.** Merchant acknowledges that Member and/or Elavon is required to report Merchant's business name and the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed by Visa or to the Consortium Merchant Negative File maintained by Discover, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to Elavon's and Member's fulfillment of the obligations related to the listing of Merchant in such databases, and Merchant waives all claims and liabilities Merchant may have as a result of such reporting.
- d) **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI DSS regulations of Discover Network, and the security programs of any other Payment Network regarding which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time (collectively, "Security Programs"). Upon request, Elavon will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Merchant will not disclose Cardholder or Transaction information to any third party, except to an agent of Merchant assisting in completing a Transaction, or as otherwise required or permitted by Laws and the Payment Network Regulations. Merchant must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent unauthorized access to or disclosure of such information. All Value Added Servicers must comply with the requirements of those Security Programs. Merchant is responsible for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, "Merchant's Agents").

Merchant shall indemnify and hold Elavon and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by any of Merchant's Agents.

e) **Data Compromise.**

i) **Notice and Investigation.** Merchant acknowledges and agrees that Cardholder data and bank account information obtained by Merchant in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Merchant must notify Elavon and Member within twenty-four (24) hours (and if notice is given orally, it must be confirmed in writing within the same twenty-four hour period), if Merchant knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used without authorization from Merchant, Merchant's Agents or systems within Merchant's or its agent's control (a "Data Incident"). The notice must include: (a) a detailed written statement about the Data Incident including the contributing circumstances, (b) the form, number and range of compromised account information, (c) specific account numbers compromised, and (d) details about the ensuing investigation and Merchant's security personnel who may be contacted in connection with the Data Incident. Merchant must fully cooperate with the Payment Networks, Elavon and Member in the forensic investigation of the Data Incident. Within seventy-two (72) hours of becoming aware of the Data Incident, Merchant must engage the services of a data security firm acceptable to the Payment Networks and/or to Elavon and Member to assess the vulnerability of the compromised data and related systems. Merchant must provide weekly written status reports to Elavon and Member until the forensic audit is complete. Merchant must promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks and/or Elavon and Member may request. In addition, Merchant must provide all audit reports to Elavon and Member, and such audits must be completed to the satisfaction of the Payment Networks and/or of Elavon and Member. If Merchant fails to supply the forensic audits or other information required by the Payment Networks and/or by Elavon and Member, Merchant will allow Elavon or Member to perform or have performed such audits at Merchant's expense.

ii) **Preservation of Records.** In the event of a Data Incident, Merchant must take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Merchant shall cooperate with Elavon and Member to rectify, correct and resolve any issues that may result from the Data Incident, including providing Elavon and Member with (and obtaining any necessary waivers for) all relevant information to verify Merchant's ability to prevent future data incidents in a manner consistent with the Agreement.

iii) **Liability for Data Incident.** Without waiving any of Elavon's and Member's rights and remedies, Merchant is liable for all fraudulent transactions related to any Data Incident and all costs Elavon or Member incur as a result of such Data Incident, including any fees, fines, penalties and/or assessments by the Payment Networks, claims from third parties, all costs related to the notification of Cardholders or Customers and cancellation, re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI DSS review for a report of compliance.

iv) **Elavon Data Compromise.** If Elavon suffers a data incident and Cardholder, Customer, or Transaction information has been accessed from Elavon, its employees or agents, or systems within Elavon's control, then Elavon will follow all applicable Payment Network Regulations with respect to such data incident including providing the required reporting and forensic audits to the Payment Networks.

14) **USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.**

a) **Use of Trademarks.** Merchant may use and display the Payment Networks' marks, and shall display such marks in accordance with the standards for use established by the Payment Networks. Merchant's right to use all such marks will terminate upon termination of the Agreement or upon notice by a Payment Network to discontinue such use. Merchant's use of promotional materials provided by the Payment Networks will not indicate, directly or indirectly, that such Payment Networks endorse any goods or services other than their own and Merchant may not refer to any Payment Networks in stating eligibility for Merchant's products or services.

b) **Confidentiality.**

i) **Cardholder and Transaction Information.** Merchant, Elavon and Member shall, at all times, protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Merchant, Elavon and Member must maintain Cardholder and Transaction

information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that they no longer deem necessary or appropriate to maintain. Further, Merchant, Elavon and Member must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed to unauthorized parties or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose, including record keeping or additional authorization processing.

- ii) **Bankruptcy.** In the event of failure or other suspension of Merchant's business operations, including any Bankruptcy Proceeding, Merchant must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. Merchant must:

- (A) Return this information to Elavon, or
- (B) Provide acceptable proof of destruction of this information to Elavon.

- iii) **Confidential Information Generally.** Each party acknowledges that during the Initial Term and any Renewal Term of this Agreement, a party may disclose certain Confidential Information to the other party. Each party agrees to protect the other party's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise disseminate the other party's Confidential Information, except in connection with the performance of its obligations under this Agreement. Each party recognizes that the disclosure or unauthorized use of Confidential Information will injure the Disclosing Party. Each party further recognizes and agrees that the injury that the Disclosing Party will suffer for any actual or threatened breach by the Receiving Party of the covenants or agreements contained herein cannot be compensated by monetary damages alone, and the Receiving Party therefore agrees that the Disclosing Party, in addition to and without limiting any other remedies or rights which it may have under the Agreement or otherwise, shall be entitled to equitable relief, including injunction and specific performance. The Receiving Party further agrees to waive any requirement for the securing or posting of any bond in connection with such equitable remedy. The obligations of non-disclosure provided hereunder shall

continue during the term of the Agreement and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.

- c) **Passwords.** If Merchant receives a password from Elavon to access any of Elavon's databases or services, Merchant will: (i) keep the password confidential; (ii) not allow any other entity or Person to use the password or gain access to Elavon's or any of its agent's databases or services; (iii) be liable for all action taken by any user of the password that obtained access to the password from Merchant; and (iv) promptly notify Elavon if Merchant believes Elavon's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party for products or services related to Transaction processing, Merchant must protect such passwords in the manner required by such third party and indemnify, defend, and hold Elavon and Member harmless from any losses, costs, or expenses that arise from Merchant's use or misuse of such third party passwords.
- d) **Proprietary Interest.** Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Elavon, unless specifically agreed to in a separate license or use agreement between Merchant and Elavon. Nothing in the Agreement shall be construed as granting Merchant any patent rights or patent license in any patent which Elavon may obtain in respect to Elavon's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of Elavon's services, equipment, or software.
- e) **Actions upon Termination.** Upon the request of the Disclosing Party or upon the termination of the Agreement, the Receiving Party shall promptly return all Confidential Information and all copies of such Confidential Information in the Receiving Party's possession or in the possession of its agents and/or will deliver to the Disclosing Party, destroy or irreversibly erase, as the Disclosing Party shall request, all originals and copies prepared by the Receiving Party or its agents or prepared for the Receiving Party's use containing or reflecting any Confidential Information of the Disclosing Party. In

the event a dispute arises between the parties in relation to the Confidential Information (or a part thereof) or the Agreement, the Receiving Party may retain a copy of such Confidential Information (or part thereof) as, in the Receiving Party's discretion, reasonably exercised, is necessary for its defense of the dispute and its retention and use of such Confidential Information shall continue to be subject to the terms of the Agreement.

- f) **Disclosure of Confidential Information.** In the event that the Receiving Party and/or its agents become legally required or compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or by any similar process or court or administrative order) to disclose Confidential Information, then the Receiving Party shall provide the Disclosing Party with prompt prior written notice of such legal requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section 14. In the event that such protective order or other remedy is not obtained, and regardless of whether the Disclosing Party waives compliance with the terms of this Section 14, the Receiving Party agrees to disclose only that portion of the Confidential Information which the Receiving Party, as advised by the written opinion of counsel, is legally required to be disclosed and to exercise best efforts to obtain assurances that confidential treatment will be accorded such Confidential Information.

15) MISCELLANEOUS PROVISIONS.

- a) **Entire Agreement.** The Agreement (including all Schedules, attachments, exhibits, addenda and other documents incorporated by reference into the Agreement or any of its Schedules, attachments, exhibits or addenda) and any amendment or supplement to it, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement. In the event of a conflict between the documents comprising the Agreement, the following order of priority will apply: (i) any amendment or Schedule to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Operating Guide; and (v) any other guides or manuals provided to Merchant from time to time.
- b) **Jurisdiction and Venue; Governing Law.** All matters arising out of or related to the Agreement will be governed by and construed in accordance with the Laws of the State of Georgia. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Georgia and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the State of Georgia. Jurisdiction and venue for any claim or
- cause of action arising under the Agreement (other than collection actions by Elavon or Member relating to amounts owed by Merchant under the Agreement) shall be exclusively in the United States District Court for the Northern District of Georgia, and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, that court. If subject matter jurisdiction does not exist in the United States District Court for the Northern District of Georgia, then the exclusive forum and venue for any such action shall be the courts of the State of Georgia located in Fulton County and the parties submit to personal jurisdiction of, and waive any personal jurisdiction or inconvenient forum objection to, such court. Merchant, Elavon and Member hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the Agreement. Merchant, Elavon and Member each represents to the other that this waiver is knowingly, willingly and voluntarily given.
- c) **Exclusivity.** During the Initial Term and any Renewal Term of the Agreement, Merchant will not enter into an agreement with any other entity that provides processing services similar to those provided by Elavon and Member as contemplated by the Agreement without Elavon and Member's written consent.
- d) **Construction.** Any alteration or strikeover in the text of the Agreement or any Schedule thereto will have no binding effect and will not be deemed to amend the Agreement. The headings used in the Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.
- e) **Assignability.** The Agreement may not be assigned by Merchant, directly or by operation of law or by change in control of Merchant, without the prior written consent of Elavon. If Merchant, nevertheless, assigns the Agreement without Elavon's consent, the Agreement will be binding on the assignee as well as Merchant. Elavon will not transfer or assign the Agreement without the prior written consent of Merchant, provided that such consent shall not be required for (i) the assignment or delegation to an affiliate of Elavon, or (ii) the assignment or delegation to any Person into or with which Elavon shall merge or consolidate, or who may acquire substantially all of Elavon's stock or assets.
- f) **Notices.** Any written notice to the other party under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or (iii) one (1) business day after being deposited

with a nationally recognized overnight carrier. Such notices will be addressed to the Merchant's last address shown on the records of Elavon, or to Elavon at 7300 Chapman Highway, Knoxville, TN 37920.

- g) **Bankruptcy.** Merchant will immediately notify Elavon of any Bankruptcy Proceeding initiated by or against Merchant. Merchant will include Elavon on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Merchant acknowledges that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy.
- h) **Customer Contact.** Merchant authorizes Elavon and Member to contact Merchant's Customers or their Issuer if Elavon or Member determines that such contact is necessary to obtain information about any Transaction between Merchant and a Customer.
- i) **Telephone Recording.** For quality assurance and training purposes Merchant authorizes Elavon to monitor and record telephone conversations at any time. The decision to record any conversation shall be solely in Elavon's discretion and pursuant to applicable Law.
- j) **Communication with Merchant.** Merchant agrees that Elavon and Member may provide Merchant with information about their services including, without limitation, information about new products and/or services by facsimile, telephone, mobile telephone and/or electronic mail.
- k) **Amendments.** Except as otherwise provided in the Agreement, amendments to the Agreement shall be in writing and signed by the parties. Notwithstanding the foregoing, Elavon and Member may amend or modify the Agreement, to the extent such changes are required by or attributable to changes in the Payment Network Regulations or other Laws, upon written notice to Merchant. Elavon or Member will inform Merchant of such a change in a periodic statement or other written notice, and such change will become effective not less than thirty (30) days following the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Merchant, unless a later effective date is provided.
- l) **Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby if the essential terms and conditions of the Agreement for each party remain valid, legal and enforceable.

None of the failure, the delay by any party to exercise, or the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by a party must be signed by the waiving party.

- m) **Independent Contractors.** Elavon, Member, and Merchant will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. The Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
- n) **Survival.** All of the obligations of each party hereto that by their nature should survive termination or expiration of the Agreement in order to achieve its purposes, including, without limitation, Sections 3, 4, 5, 6, 7, 10, 12, 13, 14, and 15(b) of the TOS, shall so survive and remain binding upon and for the benefit of the parties hereto.
- o) **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.
- p) **Force Majeure.** Elavon and Member shall not be considered in default in performance of their obligations to the extent such performance is delayed by force majeure affecting their ability to so perform. Force majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples, revolution, civil commotion or riots, strike, lockout, epidemic, accident, fire, flood, earthquake, windstorm, explosion, lack of or failure of telecommunication facilities, regulation or ordinance, demand or requirement of any government or governmental agency, or any court, tribunal or arbitrator(s), having or claiming to have jurisdiction over the subject matter of the Agreement or over the parties hereto, or any act of God or any act of government or any cause whether of the same or different nature existing now or in the future which is beyond the reasonable control of Elavon and Member.

Section B - Glossary

- 16) **ACH Rules:** The NACHA Operating Rules and Operating Guidelines, which govern the interregional exchange and settlement of ACH transactions.
- 17) **Agreement:** The Payment Device Processing Agreement, including the TOS, MOG, any Schedules, attachments, exhibits, addenda, the Merchant

Application, amendments, or additions as permitted under the terms of the Agreement.

- 18) **Alternate Security:** The security described in Section (A)(4)(b)(vi).
- 19) **American Express:** American Express Travel Related Services Company, Inc.
- 20) **ACH:** Automated Clearing House.
- 21) **ACH Network:** The funds transfer system governed by the ACH Rules. The ACH Network allows participating depository financial institutions to clear interbank entries electronically.
- 22) **Bankruptcy Proceeding:** With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.
- 23) **Card Not Present:** The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
- 24) **Card Present:** The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.
- 25) **Cardholder:** (i) the individual in whose name a Payment Device has been issued; or (ii) any individual who possesses or uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or who purports to be an authorized user of the Payment Device.
- 26) **Cardholder Data:** One or more of the following data elements pertaining to a Cardholder's account: card number, Cardholder name (if applicable), card account activity, Cardholder account balance, and/or such other data applicable to the Merchant's card program.
- 27) **Chargeback:** A Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.
- 28) **Confidential Information:** All information or items proprietary to any party to the Agreement, of which another party to the Agreement obtains knowledge or access as a result of the relationship formed as a result of the Agreement, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.
- 29) **Convenience Fee:** A fee charged by Merchant for an added convenience to the Cardholder for the use of a Payment Device in a Transaction in accordance with the Payment Network Regulations.
- 30) **Credit Card:** A card or device associated with a revolving line of credit that may be used to purchase goods and services from Merchant or to pay an amount due to Merchant. A "Credit Card" includes any of the following cards or devices that are associated with a line of credit extended to the Person to whom the card or device is issued: (i) a Visa card or other card or device bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card or device bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); (iii) a Discover Network card or other card or device bearing the symbol(s) of Discover Network; or (iv) any card or device bearing the symbol of any other Credit Card Association.
- 31) **Credit Card Associations:** (i) Visa.; (ii) MasterCard; (iii) American Express; (iv) Discover Network; (v) Diners; (vi) JCB; and (vii) any other organization or association that hereafter contracts with Elavon and/or Member to authorize, capture, and/or settle Transactions

- effected with Credit Cards or signature-based Debit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.
- 32) **Customer:** A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder).
- 33) **Debit Card:** A card or device bearing the symbol(s) of one or more EFT Networks or Credit Card Associations, which may be used to purchase goods and services from Merchant or to pay an amount due to Merchant by an electronic debit to the Cardholder's designated deposit account. A "Debit Card" includes (i) a card or device that bears the symbol of a Credit Card Association and may be used to conduct signature-based, offline debit Transactions; and (ii) a card or device that bears the symbol of an EFT Network and can be used to conduct PIN-based, online debit Transactions.
- 34) **Demand Deposit Account (DDA):** The commercial checking account at a financial institution acceptable to Elavon and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other payments due under the Agreement.
- 35) **Diners:** Diners Club International Ltd.
- 36) **Disclosing Party:** The party providing the Confidential Information to the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the party providing its Confidential Information).
- 37) **Discover:** DFS Services LLC.
- 38) **Discover Network:** The payment network operated and maintained by Discover.
- 39) **EBT Card:** A card utilized for electronic benefits transfers.
- 40) **ECS Association:** Visa (in its operation of the Visa POS Check Service), NACHA and any regional ACH association or network, the Federal Reserve (in its processing of ACH entries or Demand Drafts or other legal replacements or substitutes for a Paper Check, including under the Check Clearing for the 21st Century Act or under applicable provisions of the Uniform Commercial Code), and any other organization or association used by Elavon and/or Member in connection with the ECS that is hereafter designated as an ECS Association by Elavon from time to time.
- 41) **EFT Networks:** (i) Interlink Network Inc., Maestro U.S.A., Inc., STAR Networks, Inc., NYCE Payments Network, LLC, PULSE Network LLC, ACCEL/Exchange Network, Alaska Option Services Corporation, Armed Forces Financial Network, Credit Union 24, Inc., NETS, Inc., and SHAZAM, Inc.; and (ii) any other organization or association that hereafter authorizes Elavon and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
- 42) **Effective Date:** The date set forth in the signature block of Elavon on page 1 of the Agreement.
- 43) **Elavon:** As applicable, Elavon, Inc., a Georgia corporation, and any affiliate or subsidiary of Elavon, Inc. that provides Processing Services to a Merchant related to Transactions. Elavon is a registered member service provider of each Member. Elavon may also be referred to as "Servicer" in the Agreement, the MOG or other documents provided to Merchant in connection with the Processing Services.
- 44) **Electronic Check Services (ECS):** The service offering by Elavon pursuant to which Transactions effected via an ACH Payment Device are presented for clearing and settlement by or through an ECS Association.
- 45) **Electronic Commerce Transaction:** A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant.
- 46) **Electronic Gift Card (EGC):** A special stored value card provided by Merchant that is redeemable for merchandise, services or other Transactions.
- 47) **Excessive Activity:** The occurrence, during any monthly period, of Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of Merchant's Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of Transactions.
- 48) **Interchange:** The clearing and settlement system for Visa, MasterCard and, where applicable, Discover Credit Cards and Debit Cards, where data is exchanged between Elavon and the Issuer through the applicable Payment Network.
- 49) **Issuer:** The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.
- 50) **JCB:** JCB International Co., Ltd.
- 51) **Laws:** All applicable local, state, and federal statutes, regulations, ordinances, rules, and other binding law in effect from time to time.
- 52) **Mail Order/Telephone Order (MO/TO) Transaction:** For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.
- 53) **MasterCard:** MasterCard International Incorporated.
- 54) **Member:** The sponsoring Member designated on the Merchant Application or on a particular Schedule hereto, as applicable. Any Member may be changed by Elavon at any time and the Merchant will be provided notice of same.
- 55) **Merchant:** The entity set out in the first page of the Agreement and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned by Merchant without the need to execute a new Schedule B.

- 56) **Merchant Application:** The Merchant Application attached hereto as Schedule C and any additional document containing information regarding Merchant's business that is submitted to Elavon and Member in connection with Merchant's application for Processing Services, including documents submitted by Merchant as a part of the bid process, if applicable.
- 57) **Merchant Operating Guide (MOG):** Elavon's operating manual that prescribes rules and procedures governing Transactions and Merchant's use of the Processing Services. The MOG may be amended from time to time by Elavon in its sole discretion, which amendments will be effective upon notice to Merchant.
- 58) **NACHA—The Electronic Payments Association:** The national association that establishes standards, rules, and procedures governing the ACH Network, including the ACH Rules.
- 59) **Payment Device:** Any device or method used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device or method, including an Electronic Gift Card, check (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, stored value card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.
- 60) **Payment Network:** Any Credit Card Association, EFT Network, ECS Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.
- 61) **Payment Network Regulations:** Individually and collectively, as the context may dictate, all rules and operating regulations of the EFT Networks, Credit Card Associations and ECS Associations, and all rules, operating regulations, and guidelines for Transactions issued by Elavon from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.
- 62) **Person:** Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.
- 63) **POS Device:** A terminal, software or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by Elavon and the applicable Payment Network.
- 64) **Processing Services:** The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.
- 65) **Receiving Party:** The recipient of Confidential Information from the other party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the other party).
- 66) **Reserve Account:** The account established pursuant to Section (A)(4).
- 67) **Reserve Amount:** The amount established pursuant to the calculation set forth in Section (A)(4).
- 68) **Reserve Event:** The events designated in Section (A)(4).
- 69) **Retrieval Request:** A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.
- 70) **Servicer:** See "Elavon."
- 71) **TOS:** These Terms of Service and all additions, amendments, modifications and replacements to the TOS, as applicable.
- 72) **Transaction:** Any action between a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).
- 73) **Transaction Receipt:** The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.
- 74) **Value Added Servicer:** Any entity that stores, processes, transmits or accesses Payment Device data or Transaction data on behalf of Merchant or that provides software to Merchant for transaction processing, storage, or transmission, except to the extent such services are performed by the entity in its capacity as an agent of Elavon performing Elavon's obligations under the Agreement.
- 75) **Visa:** Visa U.S.A., Inc.



SCHEDULE A
SCHEDULE OF FEES

[Separately Provided]



SCHEDULE B
AFFILIATED ENTITIES

Check one:

☐ Merchant named on page 1 only, and all locations will operate under Tax ID Number _____.

☐ Merchant named on page 1, with Tax ID Number _____ and the following affiliate(s) (a separate Form W-9 or Form W-8BEN, as applicable, must be submitted for each entity identified below):

Name

Tax ID Number

MERCHANT, on behalf of itself and each of the affiliated entities identified above:

By: _____

Name: _____

Title: _____

ELAVON, INC.

By: _____

Name: _____

Title: _____

Date: _____

(Schedule B "Effective Date")

MEMBER

By: _____

Name: _____

Title: _____



SCHEDULE C
MERCHANT APPLICATION (LARGE RELATIONSHIP)

[Separately Provided]



SCHEDULE I
PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS

PROCESSING SERVICES FOR GOVERNMENT ENTITIES AND INSTITUTIONS. Merchant elects and agrees to accept the Payment Device Processing Services for government entities and institutions, as such services are further described in this Schedule and the Exhibits hereto, and subject to the terms and conditions of the applicable provisions of the Agreement. Except as expressly modified pursuant to this Schedule, all terms and conditions of the Agreement, including all other Schedules to the Agreement, remain in full force and effect and shall govern the relationship among the parties to this Schedule I.

Elavon Fee Collection Model (check one):

- ☐ Direct Debit
☐ Compensating Balances (when available)
☐ Monthly Net Settlement
☐ Invoice (when available)

Capitalized terms used and not otherwise defined in this Schedule I shall have the meanings ascribed to them in the Agreement or in the Merchant Operating Guide ("MOG"), which is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule I to the Agreement.

_____,
on behalf of itself and each of the affiliated entities
identified on Schedule B to the Agreement (the
"MERCHANT"):

By: _____

Name: _____

Title: _____

ELAVON, INC.

By: _____

Name: _____

Title: _____

Date: _____

(Schedule I "Effective Date")

MEMBER

By: _____

Name: _____

Title: _____

Section A – General Provisions Applicable to All Merchants under this Schedule

- 1) **Fees.** Elavon and Member will be compensated for the Processing Services provided under this Schedule as provided in the Agreement as such Agreement may be modified by this Schedule.
- 2) The following provisions hereby replace the like-numbered provisions of the Agreement or are hereby inserted or deleted from the Agreement, as indicated, for Merchants operating under this Schedule.
 - a) **Section (A)(4)(a)(i) Security Agreement.** is deleted.
 - b) **Section (A)(4)(a)(ii) Perfection.** is deleted.
 - c) **Section (A)(6)(a) Accuracy of Information.** is revised to read as follows:
 “a) **Accuracy of Information.** Merchant must promptly notify Elavon in writing of any material changes to the information provided in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement, including, without limitation, any additional location or new facility at which Merchant desires to use the Processing Services provided under this Schedule, the form of entity, change in control, material changes to the type of goods and services provided and/or payments accepted, and how Transactions are completed (e.g., by telephone, mail, electronic commerce, or in person at Merchant’s place of business). The notice must be received by Elavon at least ten (10) business days prior to the change. Merchant will promptly provide any additional information reasonably requested by Elavon. Merchant will be responsible for all losses and expenses incurred by Elavon or Member arising out of Merchant’s failure to provide proper notice or requested information for any such change, and will not make any claims against Elavon or Member for any losses sustained by Merchant as a result of such failure. Elavon may immediately terminate the Agreement upon a material change to the information in the Merchant Application if such change is not approved by Elavon. Elavon has the right to rely upon written instructions submitted by Merchant to request changes to Merchant’s business information. Merchant may request written confirmation of Elavon’s consent to the changes to the Merchant’s business information.”
 - d) **Section (A)(6)(b)(i) Merchant Responsibilities.** is revised to read as follows:
 “i) **Merchant Responsibilities.** As between Merchant, Elavon and Member, Merchant will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands or damages arising out of or in connection with (A) any dispute with a Customer, Cardholder or any third party relating to any Transaction, (B) any

action taken by Elavon or Member with respect to the DDA or Reserve Account in accordance with the Agreement, or (C) any breach by Merchant of any obligation under this Agreement. Merchant will not make any claims against Elavon or Member for any liabilities, claims losses, costs, expenses and demands of any kind or nature, arising out of or in connection with any of the foregoing suits, claims, losses, demands or damages.”

- e) **Section (A)(6)(b)(ii) Elavon Responsibilities.** is revised to read as follows:
 “ii) **Elavon Responsibilities.** Elavon will be responsible for and will at its own expense defend itself against any suits, claims, losses, demands or damages arising out of (A) Elavon’s breach of the Agreement, or (B) Elavon’s negligence, gross negligence or willful misconduct.”
- f) **Section (A)(8)(b)(ii) Financial Information.** is revised to read as follows:
 “ii) **Financial Information.** Upon the request of either Elavon or Member, Merchant will provide Elavon and Member audited financial statements prepared by an independent certified public accountant selected by Merchant, or if Merchant is audited by a governmental authority, then Merchant will provide financial statements from such governmental authority. Within one hundred twenty (120) days after the end of each fiscal year (or in the case of a government entity, when available), Merchant will furnish Elavon and Member, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year, each audited as provided above. Merchant shall also provide Elavon and Member such interim financial statements and other information as Elavon or Member may request from time to time.”
- g) **Section (A)(11)(a) Products or Services.** is revised to read as follows:
 “a) **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any Value Added Servicer unless Merchant has disclosed such use to Elavon previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to this Agreement, Merchant will be bound by the acts and omissions of its Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will be responsible for any loss, cost, or expense incurred in connection with or by reason of Merchant’s use of any Value

Added Servicer. Neither Elavon nor Member is responsible for the Value Added Servicer, nor are they responsible for any Transaction until Elavon receives data for the Transaction in the format required by Elavon.

h) **Section (A)(12)(d)(iii) Early Termination Fee. [DELETED]**

i) **Section (A)(13)(d) Security Program Compliance.** is revised to read as follows:

“d) **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI DSS regulations of Discover Network, and the security programs of any other Payment Network as to which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time (collectively, “Security Programs”). Upon request, Elavon will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. All Value Added Servicers from whom Merchant procures services must comply with the requirements of those Security Programs. Merchant, and not Elavon or Member, is responsible for Merchant’s own actions or inactions, those of Merchant’s officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, “Merchant’s Agents”). Merchant shall be responsible for any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by Merchant or any of Merchant’s Agents.”

j) **Section (A)(14)(c) Passwords.** is revised to read as follows:

“c) **Passwords.** If Merchant receives a password from Elavon to access any of Elavon’s databases or services, Merchant will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Elavon’s databases or services; (iii) be responsible for all action taken by any user of the password that obtained access to the password from Merchant; and (iv) promptly notify Elavon if Merchant believes Elavon’s databases or services or Merchant’s information has been compromised by use of the password. If Merchant receives passwords from a third party for products or services related to Transaction processing, Merchant must protect such passwords in the manner required by such third party and be responsible any losses, costs, or expenses that

arise from Merchant’s use or misuse of such third party passwords.”

k) **Section (A)(15)(b) Jurisdiction and Venue; Governing Law.** is deleted.

l) **Section (A)(15)(c) Exclusivity.** is deleted.

3) In addition to the termination rights set forth in Section (A)(12)(b)(i) of the Agreement, Merchant shall have the following termination right added to the Agreement as Section (A)(12)(b)(i)(C):

“C) The Agreement may be terminated by Merchant in the event that sufficient legislative appropriation is not available, provided that Merchant gives Elavon and Member sixty (60) days notice prior to termination.”

Section B – Elavon Fee Collection Models

4) **Direct Debit Fee Collection Model.** If Merchant elects the Direct Debit fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement remains unchanged and in full force and effect.

5) **Compensating Balances Fee Collection Model.** If Merchant elects the Compensating Balances fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:

a) **Section (A)(5)(a) Fees.** Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member, Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Such fees will be calculated once each month for the previous month’s activity. Elavon will send Member an invoice reflecting the amount of fees due, and Member will enter such amount in Merchant’s compensating balance calculation. Member will pay Elavon such amount, on Merchant’s behalf, within thirty (30) days. Alternatively, Elavon may net out the fees due from any funds due Merchant under the Agreement.

6) **Monthly Net Settlement Fee Collection Model.** If Merchant elects the Monthly Net Settlement fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:

a) **Section (A)(5)(a) Fees.** Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member, Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance with Schedule A,



Institution Service Fee Terms and Conditions attached hereto as Exhibit B.

any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Such fees will be calculated daily and will be offset by Elavon and Member against amounts owed by Elavon and Member to Merchant for: (i) on the first day of each month for the prior month's Processing Services, and (ii) following the first day of the month for fees and other amounts owed to Elavon and Member pursuant to Schedule A that are not available or reasonably calculable as of the last day of a particular month. In the event that the funds owed by Elavon and Member to Merchant on the first day of a calendar month are insufficient to offset amounts Merchant owes to Elavon and Member for Processing Services provided during the prior month, Elavon and Member may offset any unpaid balance owed by Merchant against future amounts Elavon and Member owe or will owe to Merchant until Merchant's financial obligations are fully satisfied.

- 7) **Invoice Fee Collection Model.** If Merchant elects the Invoice fee collection model on page 1 of this Schedule I, Section (A)(5)(a), Fees, of the Agreement is hereby replaced with the following provision:

- a) **Section (A)(5)(a) Fees.** Notwithstanding any provisions of Section (A)(3)(b) or Section (A)(3)(c) to the contrary, with respect to the collection of fees by Elavon and Member, Merchant will pay Elavon and Member fees in the ordinary course of business for services, supplies, and equipment in accordance with Schedule A, any amendment to Schedule A and any additional application or setup form(s) provided by Elavon and Member in writing to Merchant. Such fees will be calculated once each month for the previous month's activity. Elavon will send Merchant an invoice reflecting the fees due, which Merchant must pay within thirty (30) days of the invoice date. In addition to all other available remedies, Elavon and Member may offset any outstanding or uncollected amounts that are more than ninety (90) days past due from (i) any amounts they would otherwise be obligated to deposit into the DDA and (ii) any other amounts Elavon or Member may owe Merchant under the Agreement.

Section C – Government/Public Institution Service Fees

- 8) **Government/Public Institution Service Fees.** If Merchant is both eligible to charge or to have Elavon charge Government/Public Institution Service Fees (as defined on Exhibit B hereto) and has elected on Exhibit A to manage or to have Elavon manage Government/Public Institution Service Fees, then Merchant shall comply with the Government/Public



EXHIBIT A
GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE ENROLLMENT

ENROLLMENT FORM FOR GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE PROGRAMS

	Date:	Pricing Quote #:	<input type="checkbox"/> New Location <input type="checkbox"/> Add/Update Service	Rep Name:	Rep Phone #:
--	-------	------------------	--------------------------------------------------------------------------------------	-----------	--------------

Merchant Information	Existing MID:	Chain #:
	DBA Name:	DBA Phone #:
	Contact Name (first & last):	DBA Fax #:
	DBA Address:	City, State, Zip:
	Contact Name (First and Last):	Training Phone # (if different):
	Goods or Services Sold:	Federal Tax ID:

Processing Options	Processing Options:	
	<u>Government/Public Institution Service Fee Funding Model (check one if Merchant elects Government/Public Institution Service Fees (GPISF) assessment):</u>	
	<input type="checkbox"/> Elavon-managed ¹	
	<input type="checkbox"/> Merchant-managed ²	
	<u>Government/Public Institution Service Fee Services Programs (check all that apply, but only if Merchant elects GPISF assessment):</u>	
	<input type="checkbox"/> MasterCard Convenience Fee Program for Education and Government Merchants	
	<input type="checkbox"/> Visa Tax Payment Program	
	<u>Government/Public Institution Service Fee Pricing (applicable only if Merchant elects GPISF assessment):</u>	
	Card Service Fee % _____	
	Visa Consumer Debit (tax only): \$ _____	
ACH (via Electronic Check Services): \$ _____		
Minimum Annual Fees (if applicable): \$ _____		
Implementation Fee (if applicable): \$ _____		
<u>Payment/Transaction Types for GPISF Assessment (not all payment/transaction types are supported for all programs) (check all that apply, but only if Merchant elects GPISF assessment):</u>		
<input type="checkbox"/> Credit – (check all that apply): <input type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> Discover (available if Elavon-acquired)		
<input type="checkbox"/> Signature Debit – (check all that apply): <input type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> Discover (available if Elavon-acquired)		
<input type="checkbox"/> PIN-Based Debit		
<input type="checkbox"/> ACH (via Electronic Check Services)		
<u>Elavon Product Supporting GPISF Assessment to be Used by Merchant (check all that apply):</u>		
<input type="checkbox"/> Enterprise Billing Solutions (Schedule K required if checked)		
<input type="checkbox"/> Service Fee Terminal (VeriFone vx570)		
<input type="checkbox"/> Limited Acceptance (Visa, MasterCard, and Discover credit cards only)		
<input type="checkbox"/> MasterCard and Discover credit cards and signature debit cards		
<input type="checkbox"/> Merchant Proprietary Solution or Value-Added Servicer		
<input type="checkbox"/> Other _____		

Merchant Acknowledgment	By signing below, Merchant warrants the truthfulness and accuracy of the information provided, agrees to pay the fees set forth herein and agrees to abide by the Terms & Conditions for Assessment of Government/Public Institution Service Fees.		
	Signature _____	Name & Title _____	Date _____

1. "Elavon-managed" means that Elavon establishes the amount of the Government/Public Institution Service Fee charged and retains the Government/Public Institution Service Fee in lieu of Merchant's obligation to pay Elavon the per transaction fees as set forth in the Agreement.
2. "Merchant-managed" means that Merchant establishes the amount of the Government/Public Institution Service Fee charged and retains the Government/Public Institution Service Fee. Merchant pays Elavon the per transaction fees as set forth in the Agreement for all such Transactions.



EXHIBIT B

TERMS AND CONDITIONS FOR ASSESSMENT OF GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES

ASSESSMENT OF GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES. Terms and Conditions (“T&Cs”) for Assessment of Government/Public Institution Service Fees.

1) APPLICABILITY OF AGREEMENT. If Merchant has requested authority to charge or to have Elavon charge a Government/Public Institution Service Fee to its Customers for Eligible Transactions, the following provisions apply to such Eligible Transactions and the related Government/Public Institution Service Fees charged. Any other Transactions or fees, including Convenience Fees, are governed by the standard provisions set forth in the Agreement, as modified by the applicable Schedules thereto. Merchant agrees to the following provisions, as and to the extent applicable, in addition to the terms and conditions of the Agreement.

2) RULES OF CONSTRUCTION. These T&Cs are intended to complement and are subject to your Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement or the MOG. In the event of a conflict between these T&Cs and other terms of the Agreement or the MOG, the terms of these T&Cs shall prevail.

3) DEFINITIONS.

a) Agreement. The Terms of Service (TOS) or the Payment Device Processing Agreement, as applicable.

b) Government/Public Institution Service Fee. The fee charged by Elavon or Merchant, at Merchant’s election, to Customers conducting Eligible Transactions (as described herein, as applicable) at Merchants operating in certain designated merchant category codes (“MCCs”). For the avoidance of doubt, fees referred to as a “service fee” or “convenience fee” (in the context of the MCCs described herein) as used in the applicable rules of the Credit Card Associations, where the fee is processed as a separate Transaction from the underlying purchase or payment Transaction, are included within the definition of, and are referred to herein, as a “Government/Public Institution Service Fee.”

4) GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE SERVICES.

a) Government/Public Institution Service Fee Services. At Merchant’s election, Merchant may choose to charge a Government/Public Institution Service Fee (a Merchant-managed Government/Public Institution Service Fee) or to have Elavon charge a Government/Public Institution Service Fee (an Elavon-managed Government/Public Institution Service Fee) to its Customers for Eligible Transactions, in each case provided that Merchant is in compliance with the Payment Network Regulations and Laws, including the Electronic Fund Transfer Act and Regulation E. If Merchant elects an Elavon-managed Government/Public Institution Service Fee, Merchant agrees that any Government/Public Institution Service Fee

collected in connection with an Eligible Transaction will be retained by Elavon and Member and that such amount constitutes Elavon’s and Member’s property, and Merchant has no right, title or interest in such amounts. Further, if Merchant elects an Elavon-managed Government/Public Institution Service Fee, Merchant agrees that Elavon may adjust the Government/Public Institution Service Fee amount from time to time as necessary or appropriate to accommodate changes in Payment Network fees (including Interchange fees), material changes in average ticket size and/or monthly Transaction volume, Interchange classification or downgrades, changes in Chargeback rates, or changes in Payment Devices accepted and/or payment channels offered by Merchant. Additionally, Elavon may immediately terminate the Processing Services for Government/Public Institution Service Fees if Merchant’s Chargeback rates materially exceed industry averages. If Merchant elects a Merchant-managed Government/Public Institution Service Fee, Merchant will receive and retain the Government/Public Institution Service Fee collected in connection with Eligible Transactions and will pay regular per transaction fees to Elavon and Member for the Processing Services provided by Elavon and Member with respect to such Transactions. Merchant agrees that the minimum annual Transaction fees (which includes any Elavon-retained Government/Public Institution Service Fees) paid to Elavon and Member for Transactions processed under this Schedule shall be at least equal to the “Minimum Annual Fees” amount identified on Exhibit A hereto. For any partial period of less than a full year during the term of this Schedule, the actual amount of fees paid by Merchant to Elavon for Transactions processed under this Schedule shall be annualized to determine if Merchant has satisfied this obligation. At the end of each year (the first of which shall begin on the Schedule I Effective Date and each successive year of which shall begin immediately upon the conclusion of the preceding year), Elavon may notify Merchant if the actual Transaction fees paid by Merchant in respect of this Schedule is less than the Minimum Annual Fees amount. In the event that Merchant’s actual Transaction processing fees under this Schedule for any such period are less than the Minimum Annual Fees, Merchant shall promptly pay Elavon and Member the difference.

b) Conflict of Laws. To the extent Merchant’s state or other governing body has passed legislation that requires assessment of Government/Public Institution Service Fees by government agencies as a component of card acceptance, such laws may conflict with Payment Network Regulations. Merchant bears all responsibility and liability associated therewith, including all assessments, fees, fines and penalties levied by the Payment Networks.

5) REQUIREMENTS FOR GOVERNMENT/PUBLIC INSTITUTION SERVICE FEES. Elavon may update or



revise the provisions of this Section 5 upon written notice to Merchant.

a) Merchants Accepting Visa Cards for Eligible Transactions. The following requirements apply to Merchants accepting Visa Credit Cards and/or Visa signature Debit Cards that desire to charge or to have Elavon charge a Government/Public Institution Service Fee on certain Transactions. If Merchant also accepts and wishes to charge or to have Elavon charge a Government/Public Institution Service Fee on certain Transactions paid by MasterCard and/or Discover Network cards, the requirements of this Section (5)(a) also apply to Merchant in connection with the assessment of Government/Public Institution Service Fees on Transactions involving those Payment Devices.

i) Eligible Merchants. Merchants operating in MCC 9311 (Taxes) are eligible to charge or to have Elavon charge a Government/Public Institution Service Fee to Customers in connection with Eligible Transactions listed in Section (5)(a)(ii) below.

ii) Eligible Transactions. Eligible Merchants may charge or have Elavon charge a Government/Public Institution Service Fee only in connection with the following “Eligible Transactions”:

- 1) Federal personal income taxes;
- 2) State personal income taxes;
- 3) Real estate and other property taxes;
- 4) Federal business income taxes;
- 5) State business income taxes;
- 6) Federal payroll/unemployment taxes;
- 7) State payroll/unemployment taxes; or
- 8) Sales and use taxes.

iii) Transaction Requirements. The following requirements apply to Eligible Transactions under this Section (5)(a).

- 1) Merchant must provide Elavon with the necessary documentation to facilitate Elavon’s registration of Merchant in the “Visa Tax Payment Program,” the “MasterCard Convenience Fee for Eligible Government and Education Payments” program and/or the convenience fee program of Discover Network, in each case to the extent applicable and required.
- 2) The Government/Public Institution Service Fee must be disclosed to the Cardholder prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not wish to pay the Government/Public Institution Service Fee.
- 3) The Government/Public Institution Service Fee must apply in the same amount regardless of the Credit Card type or signature Debit Card type (with the exception of Visa Consumer Signature Debit) accepted for payment of a given Eligible Transaction within a particular payment channel. This requirement does not apply to payments made by ACH, cash, check or PIN-based Debit Card.
- 4) The Government/Public Institution Service Fee must not be advertised or otherwise communicated as an offset to the merchant discount rate.
- 5) The Government/Public Institution Service Fee cannot be charged for recurring payments. The

Government/Public Institution Service Fee is designed for one-time payments, not for payments in which a Cardholder authorizes recurring charges or debits.

6) Merchant must accept Visa as a means of payment in all channels (i.e., face-to-face, mail/telephone, and Internet environments, as applicable).

7) Merchant must feature the opportunity to pay with Visa at least as prominently as all other payment methods.

b) Merchants Not Accepting Visa Cards for Eligible Transactions. The following requirements apply to Merchants accepting Credit Cards and/or signature Debit Cards other than Visa (i.e., Merchants accepting MasterCard cards and/or Discover Network cards but not accepting Visa cards) that desire to charge or to have Elavon charge Government/Public Institution Service Fees on Eligible Transactions.

i) Eligible Merchants. Merchants operating in MCCs 8211 (Elementary Schools), 8220 (Colleges/Universities), 9211 (Courts), 9222 (Fines), 9311 (Taxes) and 9399 (Miscellaneous Government Services) are eligible to charge or to have Elavon charge a Government/Public Institution Service Fee to Customers in connection with Eligible Transactions listed in Section (5)(b)(ii) below.

ii) Eligible Transactions. Eligible Merchants may charge or have Elavon charge a Government/Public Institution Service Fee only in connection with the following “Eligible Transactions”:

- 1) Payments to elementary and secondary schools for tuition and related fees, and school-maintained room and board;
- 2) Payments to colleges, universities, professional schools and junior colleges for tuition and related fees, and school-maintained room and board;
- 3) Payments to federal courts of law that administer and process court fees, alimony and child support payments;
- 4) Payments to government entities that administer and process local, state and federal fines;
- 5) Payments to local, state and federal entities that engage in financial administration and taxation; or
- 6) Payments to Merchants that provide general support services for the government.

iii) Transaction Requirements. The following requirements apply to Eligible Transactions under this Section (5)(b).

- 1) Merchant must provide Elavon with the necessary documentation to facilitate Elavon’s registration of Merchant in the “MasterCard Convenience Fee for Eligible Government and Education Payments” program and/or the convenience fee program of Discover Network, in each case to the extent applicable and required.
- 2) The Government/Public Institution Service Fee must be disclosed to the Cardholder prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not wish to pay the Government/Public Institution Service Fee.
- 3) The Government/Public Institution Service Fee must apply in the same amount regardless of the Credit Card or signature Debit Card type accepted for payment of a given Eligible Transaction within a particular payment channel.



This requirement does not apply to payments made by ACH, cash, check or PIN-based Debit Card.

4) The Government/Public Institution Service Fee must not be advertised or otherwise communicated as an offset to the merchant discount rate.

c) Additional Requirements for Merchants Utilizing Proprietary Solutions or Value Added Servicers.

i) **POS Devices.** Merchant is responsible for ensuring that its software, POS Devices and card acceptance procedures fully comply with Elavon's instructions, including with respect to programming of software and POS Devices to handle Eligible Transactions to ensure proper assessment of Government/Public Institution Service Fees. If the Government/Public Institution Service Fee is Elavon-managed, Merchant is further responsible for complying with all requirements as provided by Elavon from time to time to appropriately process the Eligible Transactions to qualify for optimal Interchange rates within five (5) days of Elavon's communication to Merchant of the same. If Merchant fails to make changes to its POS Devices or card acceptance procedures requested by Elavon within five (5) days of the request, Elavon may, in its discretion, discontinue the program or suspend a certain payment type. Further, if Merchant fails to make such changes and the Government/Public Institution Service Fee is Elavon-managed, Elavon may adjust the Government/Public Institution Service Fee amount, bill the Merchant for charges in excess of the Government/Public Institution Service Fee to recover losses related to Transactions that did not qualify for optimal Interchange rates or for applicable Credit Card Associations' reimbursement programs, including, but not limited to, losses related to Merchant's failure to distinguish between pricing of Visa signature Debit Cards and all other card types for transactions processed within the Visa Tax Payment Program.

ii) **Approval Required to Charge or Adjust Government/Public Institution Service Fee.** Merchant may not charge or adjust Government/Public Institution Service Fees unless Merchant has disclosed such fees to Elavon previously in writing and Merchant has been approved by Elavon to charge or adjust such Government/Public Institution Service Fees. If Merchant charges or adjusts a Government/Public Institution Service Fee without having disclosed such fee or adjustment previously in writing and obtained Elavon's consent, Merchant will be in breach of the Agreement and Elavon may immediately terminate the Agreement in addition to pursuing any other remedies available under the Agreement, Laws and Payment Network Regulations.

iii) **Value Added Servicer.** Merchants accepting Visa cards for Eligible Transactions who utilize proprietary solutions or Value Added Servicers to manage a Government/Public Institution Service Fee must comply with Attachment 1, attached hereto.

6) ADDITIONAL PROCESSING REQUIREMENTS.

If Merchant voids an underlying Eligible Transaction, the associated Government/Public Institution Service Fee must be voided as well. If Merchant processes a refund for an underlying Eligible Transaction, Merchant must disclose to Customers that Government/Public Institution Service Fees are non-refundable. Merchants that desire to charge or to have Elavon charge Government/Public Institution Service Fees will be assigned separate MIDs for use in connection with Eligible Transactions and related Government/Public Institution Service Fees. MIDs assigned for use with Eligible Transactions and/or Government/Public Institution Service Fees may not be used to process Transactions that are not Eligible Transactions.

7) PAYMENT AND TRANSACTION TYPES SUPPORTED.

Government/Public Institution Service Fee capability for Credit Cards and/or signature Debit Cards depends on the Merchant's MCC, as described above, and the Payment Network Regulations of the applicable Credit Card Association. Government/Public Institution Service Fee capability is supported only through Elavon products specified on Exhibit A hereto. Not all payment and transaction types are supported for all products. Additionally, Merchant proprietary software, POS Devices, or Value Added Servicers may be certified to process Elavon-managed Government/Public Institution Service Fee Transactions. Closed network prepaid cards, electronic benefits transfer, and dynamic currency conversion are not supported for Government/Public Institution Service Fee processing.



ATTACHMENT I to T&Cs
GOVERNMENT/PUBLIC INSTITUTION SERVICE FEE PROCESSING REQUIREMENTS FOR
MERCHANTS USING PROPRIETARY SOLUTIONS OR A VALUE ADDED SERVICER

I. Underlying Eligible Transactions

The following data must be inserted in the listed fields when creating the authorization and clearing requests for the underlying Eligible Transaction (the tax liability payment).

FIELD NAME	VALUE
Merchant Category Code	9311 – Tax Payments
Merchant Name	The following lists the format and information for each type of tax collected for this field: <ul style="list-style-type: none">Federal tax payments, you must use “US Treasury Tax Payment”State Income Tax: NN – State Income Tax, where NN represents the state, for example, CA – State Income TaxFor all other taxes: Taxing Authority – Tax Type, for example:<ul style="list-style-type: none">✓ Sales Tax: NN Franchise Tax Board – Sales Tax✓ Business Income Tax: NN Franchise Tax Board – Business Income✓ Property Tax: NN Funds E-Pay – Real Estate
Merchant City	Merchant customer service phone number.
Merchant State	Merchant state two letter acronym (NN), for example, CA; (not the state of the provider).
ECI Indicator	<ul style="list-style-type: none">Use 1 or 4 for phone-initiated (MOTO) payments.Use 5, 6, 7, 8 or 9 for Internet-initiated payments.
Merchant Verification Value	This value is used for large federal tax payment requests only. If appropriate, Visa will assign and notify you of your unique MVV value.
Local Tax	In the Sales Draft Record (TC05), Transaction Record 6 (TCR6), positions 5-16 (“Local Tax”), insert the value of “0” = “0%” tax rate.
Local Tax Included	In the TC05, TCR6, position 17 (“Local Tax Included”), insert a value of “2” = Transaction is not subject to tax.

II. Government/Public Institution Service Fee Transactions

The following data must be inserted in the listed fields when creating the authorization and clearing requests for the Government/Public Institution Service Fee.

FIELD NAME	VALUE
Merchant Category Code	9311 – Tax Payments
Merchant Name	The following lists the format and information for each type of tax collected: <ul style="list-style-type: none">Federal tax payments, you must use “US Treasury Tax Payment Service Fee”State Income Tax: NN – State Income Tax Service Fee, for example, CA – State Income Tax Service FeeFor all other taxes: Taxing Authority – Tax Type Service Fee, for example:<ul style="list-style-type: none">✓ Sales Tax: NN Franchise Tax Board – Sales Tax Service Fee✓ Business Income Tax: NN Franchise Tax Board – Business Income Service Fee✓ Property Tax: NN Funds E-Pay – Real Estate Service Fee
Merchant City	Merchant service phone number.
Merchant State	Merchant state two letter acronym (NN), for example, CA; (not the state of the provider).
ECI Indicator	<ul style="list-style-type: none">Use 1 or 4 for phone-initiated (MOTO) payments.Use 5, 6, 7, 8 or 9 for Internet-initiated payments.
Local Tax	In the Sales Draft Record (TC05), Transaction Record 6 (TCR6), positions 5-16 (“Local Tax”), insert the value of “0” = “0%” tax rate.
Local Tax Included	In the TC05, TCR6, position 17 (“Local Tax Included”), insert a value of “2” = Transaction is not subject to tax.





The name your passengers know and trust

The following is a response to all tiers listed in the RFQ that we can provide through our trusted partner, VeriFone.

At VeriFone Transpositions Systems we look forward to working with your team.

VeriFone Introduction:

We appreciate the opportunity to provide a general overview and business model for the VeriFone Taxi solutions for Indianapolis. The VeriFone offering will provide Indianapolis Taxi Industry the ability to immediately start processing credit cards using a VeriFone Passenger Information Monitors. VeriFone taxi solutions offer the BEST products in today's market place and offers your taxi industry the most economical and reliable technology rich offering available. In addition, the VeriFone solution will work and operate with your existing dispatch system.

VeriFone's taxi payment solutions are proven and successful in some of the most demanding transportation markets in the US - including New York City, Philadelphia, Boston, Chicago, Las Vegas, Miami, Baltimore, and Ft Lauderdale. Global installations can be found in London, South Africa and Turkey amongst others. You can trust VeriFone for all your in-cab payments needs.

VeriFone's taxi solutions in general are designed to address the needs of taxi businesses of any size. Providing automated solutions for in-vehicle efficiency and fleet management is how VeriFone makes a difference for taxi fleets around the world.

VeriFone transportation expertise can help you implement the right strategy for your success. With the right equipment, software and reporting your group can make better decisions and meet your regulatory goals.



III. SCOPE OF PRODUCTS AND SERVICES

- o **Tier 1: Base level wireless credit card processing terminal:**

VTS ISO Partner Response:

VeriFone Transportation System Taxi Solutions for Tier One:

The VeriFone in taxi Tier One solution is called the Victory System. The VeriFone solution is designed to be installed in either the front for driver operation or rear the preferred installation in the back for passenger access. We have found that the passenger installation to be the best solution as it relates to reduced fraud, higher driver tips, increased credit card traffic and overall passenger satisfaction.

The VeriFone system includes a dedicated handheld styled device designed specifically to meet the demanding environment of the taxi industry. The VeriFone Victory system is mounted directly in the taxi and utilizes VeriFone Transportation Systems eFleet taxi backend management system. It delivers a wealth of features that benefits the passenger, drivers and the fleet.

VeriFone Victory System:

The VeriFone Victory System provides the industry leading taxi credit card payment solutions, fleet management features and passenger friendly user interface in a durable compact handheld style device mounted directly into a taxi cab.

The VeriFone Victory includes a built in card swipe, printer, wireless modem, the latest PCI PED 2.0 and optional PCI PTS 3.0 requirements and even offers end-to-end encryption capabilities. Credit card transactions are approved and a receipt starts to print in an average of 3 seconds from the time the credit card is swiped.

The passengers experience is enhanced with an easy to use menu driven eye-catching graphical user interface, a large sharp 3.5" color display fits, an illuminating, blue backlit keypad that is spill resistance and ideal for low-lighting situations often found within the taxi environment. So day or night the passengers can use the Victory to pay for their taxi fares.

At the end of the ride the passenger or driver follow the payment screens. Below in tier 1 subset is a detail description of the payment screens. The only difference is that the driver or passenger has to enter the taxi meter fare amount as tier 1 solution the configuration for the Victory is not integrated or linked to the meter. The Victory is mounted directly into the cab.



Tier 1 continued**o Sub-Set 1: Wireless credit card processing terminal in the rear passenger compartment****VTS ISO Partner Response:**

The VeriFone Victory integrated meter solution

As the leading provider of Passenger Information Monitors "PIM" the VeriFone Victory PIM has been designed to be integrated (linked) with the leading taxi meters. The VeriFone system incorporates the features being used daily in thousands and thousands of existing VeriFone Passenger Information Monitors. The Victory PIM will automatically go into the payment mode when the taxi driver times off the meter at the end of the ride. The passenger follows a few simple screens to complete the payment process. We have pictures of the process in our tier 2 response. The screens are similar but sized to fit the Victory smaller screen footprint.

Victory Credit Card payment screens**Screen 1: Payment Screen: Cash or Credit Card**

- Screen will show taxi meter fare amount and the choice of two buttons to press one to pay by credit card or the other cash. If cash is selected the meter prints a cash receipt and goes to the "Thanks You For Riding With Us" screen. If the passenger prefers to pay by credit card the following screens appear.

Screen 2: Credit card Tip screen

- The passenger is prompted to enter a tip for the driver if they wish to leave a gratuity. The Victory screen has 3 buttons each with a different tip option amounts.

Screen 3:

- The passenger is prompted to swipe their credit card.

Screen 4:

- In approximately 3 seconds the credit card is approved and receipts of the transaction are printed.

For record keeping the transaction details are stored on VeriFone's eFleet Taxi Management system. This system is accessible by the fleet, VIP and or the driver.



o Tier 2: Wireless credit card processing terminal with GPS tracking

VeriFone offers computerized dispatch systems that integrate both front and rear credit card payment process. The dispatch system is a full featured computerized dispatch system with the ability to dispatch cabs directly to passengers based on passenger requirements. As this RFQ is focused on the payment features VeriFone will address the dispatch features with any fleet that is interested. What's important is to reference, that the VeriFone dispatch system integrates directly with credit card payment system. Credit card payments can be performed with either the front or rear facing VeriFone payment screens. The payment screens are described in detail in Tier 2 sub-set below.

Tier 2: Wireless credit card processing terminal with GPS tracking**VTs Response:**

VeriFone Transportation Systems Tier 2 Wireless credit card processing terminal with GPS tracking;

As the prominent global leader of taxi credit card Passenger Information Monitor (PIM) VeriFone offering includes a VeriFone 6 inch MX 870 PIM screen with a high sensitive GPS tracking receiver and wireless modem. This full feature system meets and exceeds all Tier 2 RFQ requirements and is seamlessly integrated with a taxi meter providing the industries best in taxi solution. In addition this VeriFone PIM solution is currently being used in major cities like NYC, Chicago, Boston, San Francisco and Miami.

The VeriFone tier 2 solutions for accepting credit cards in taxis provide a secure, easy to use process for passengers. The transaction process is automated and does not require driver intervention, and the passenger maintains control of his / her card throughout the entire process.

At the start of a ride the taxi drivers hires the meter which turns on the PIM display in the passenger compartment with touch screen capabilities enabling the passenger to retrieve and enter desired information. To enhance the passenger's ride the screen will now provide advertising and media news content.

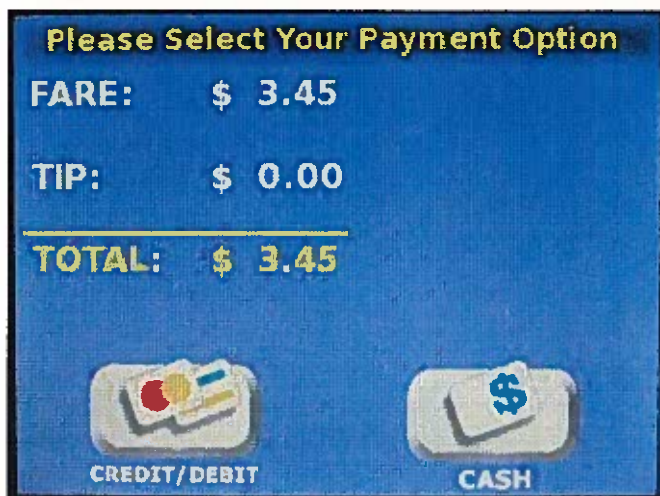
At the end of a trip, the system automatically interrupts any content being displayed on the monitor, and initiates the automated payment process. The passenger is guided through a series of very intuitive prompts to complete the transaction. The passenger can review the charges, which can include a break out of any toll. The passenger can also enter a tip of choice for the driver. At the initiation of the process, the passenger can also elect to simply pay cash. The following section describes and illustrates the passenger transaction process used for one of our current installations to demonstrate the ease of this process for the passenger:



Passenger Payment Process Example

Transactions generally take place in the following manner:

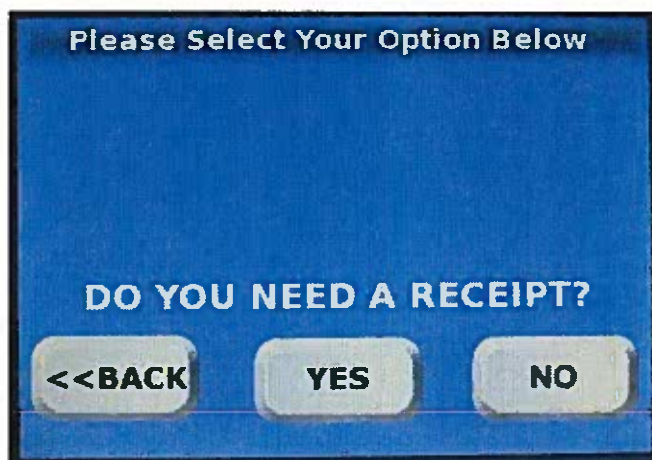
1. Driver goes in "Time OFF" or ("Pay") mode by pressing the T button on the taximeter.
2. Transaction control passes over to them PIM in the passenger compartment and the payment screen is displayed to the passengers, as shown in the screenshot below.



3. Passenger selects payment type.

Cash Fare Payments

When a passenger selects **cash payment**, the passenger is asked if they would like a receipt, as shown in the screenshot below.

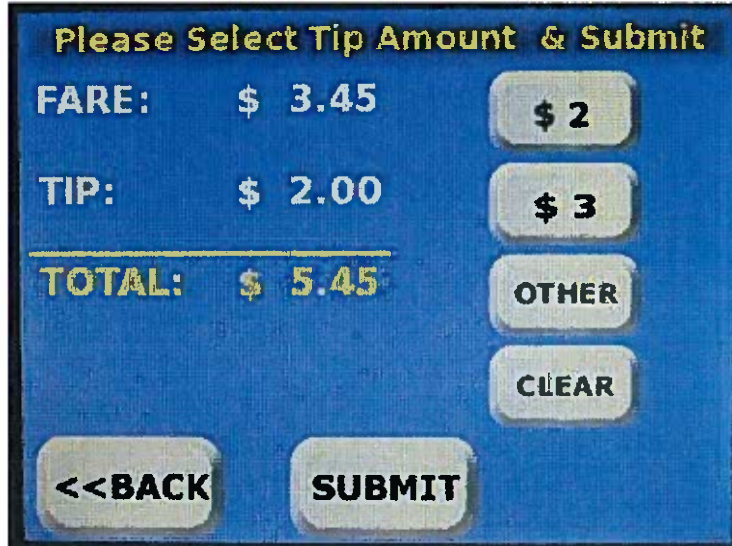


If the passenger wants a receipt, they need to press **YES**. A receipt will be printed.



Credit Card Fare Payments

When a passenger selects the **credit card** payment type, the passenger is asked to add a tip and submit the payment, as shown in the screenshot below.



Please Select Tip Amount & Submit

FARE:	\$ 3.45	\$ 2
TIP:	\$ 2.00	\$ 3
<hr/>		OTHER
TOTAL:	\$ 5.45	CLEAR
<<BACK		SUBMIT

The passenger can choose to enter as a tip either a percentage of the overall fare, or manually enter any "Other" tip amount they wish by pushing the **OTHER** button on the tip screen. This will display a numerical touch pad that the passenger can use to enter the tip amount, as shown below.



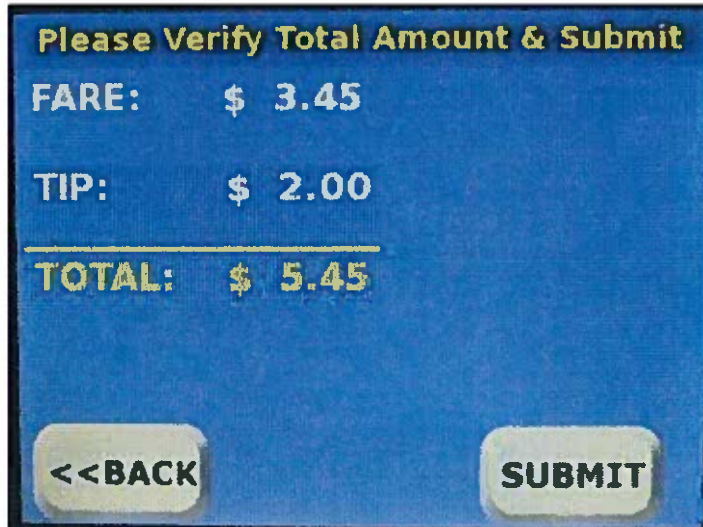
PLEASE ENTER TIP

Input field: .

1 QZ	2 ABC	3 DEF
4 GHI	5 JKL	6 MNO
7 PRS	8 TUV	9 WXY
CLEAR	0	ENTER



Once the passenger enters the tip amount and hits **ENTER**, they are asked to confirm the total payment and submit the total:



Please Verify Total Amount & Submit

FARE:	\$ 3.45
TIP:	\$ 2.00
<hr/>	
TOTAL:	\$ 5.45

<<BACK SUBMIT

Once the passenger confirms and submits the total amount, the system asks them to swipe their credit card, as shown below:



Pls. Tap PayPass ^^ Or Swipe Card >>

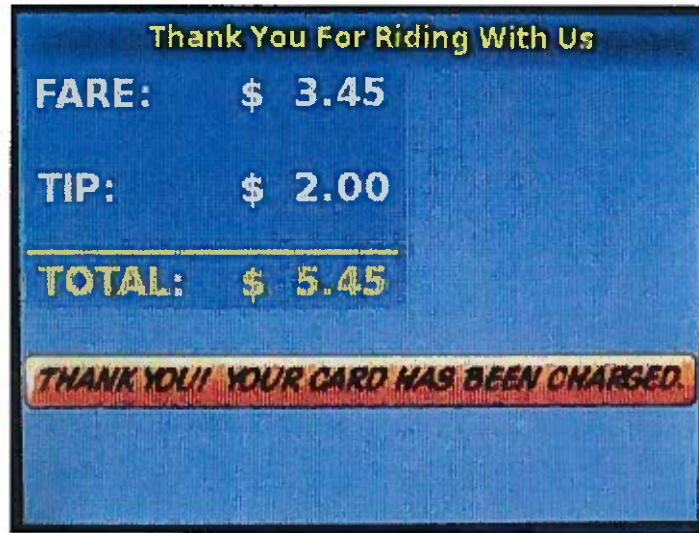
FARE:	\$ 3.45
TIP:	\$ 2.00
<hr/>	
TOTAL:	\$ 5.45

VISA MasterCard American Express DISCOVER

<<BACK



When the Credit Card is approved, the passenger will see the following approval verification screen:



The transaction summary screen displays the total amount charged to the passenger's credit/debit card and reminds the passenger to take the receipt from the driver before leaving the vehicle.



Cost Proposal/Budget

VeriFone Transportation System pricing structure

- Minimum contract is for 36 months
- 60 months is available too at reduced rates

Tier 1 –

- System description: VeriFone Victory System
- Base level –
 - \$39 monthly fee this includes technical support, wireless airtime, warranty support
 - \$0.20 Transaction fee per credit card transaction
- Sub level – Integration with existing Taxi Meter – same price
- Installation fee – TBD

Tier 2 –

- VeriFone MX screen for DIM or PIM systems
 - Includes: wireless modem, High sensitive GPS receiver, PCU, brackets, cables and antenna
 - Meter integration
- \$55 monthly fee this includes technical support, wireless airtime, warranty support
- \$0.20 Transaction fee per credit card transaction
- Sub level – advertising capable – same price
- Installation fee – TBD

Section 7.0 Cost Proposal/Budget

The KMS discount rate will be a flat percentage (%) over Interchange and Assessments. This is referred to as "interchange plus" pricing. This is the most advantageous and transparent type pricing available for merchants as opposed to "tiered" or "bundled" type pricing. Interchange plus pricing is also referred to as "Cost-Plus" pricing in which, besides paying the interchange and assessments, the merchant is paying a "pass-through" fee. The "pass-through" fee could be set as a percentage in basis points, a transaction flat fee, or a combination of both. KMS is charging a percentage only "pass-through" fee of .17% or 17 basis points. For example on a \$20 taxi fare, a discount rate of 17 basis points would represent \$.034 cents. We feel our pricing will be advantageous as it is based on the aggregate potential volume.

KMS pricing is dependent upon interchange and other fees imposed on all credit card processors by Visa, MasterCard, and other third parties. KMS will pass through to the merchant all such increases imposed by third parties, upon written notice to the merchant of the increased fee. If the merchant continues to present card transactions to KMS after 30 days following the notice of such increase, the merchant will be deemed to have accepted such increased fees.

KMS agrees to offer the pricing herein for the time period required in the RFQ. If requestor wishes to add products or services at the conclusion of the bid process, KMS will submit a new Schedule of Fees and applicable addenda.

Please refer to the price guide on the following pages for more detailed information on specific pricing.



SCHEDULE A - SCHEDULE OF FEES

I. ASSUMPTIONS / MERCHANT PROFILE

Legal Entity Name	City of Indianapolis Dept. of Code Enforcement
Business Segment	Services Government
Category Description	Government Services-Not Elsewhere Classified
MCC	9399
Multiple MCCs?	No
Locations	750 (Aggregate Total)
Initial Contract Term (yrs)	3
Date Fees Last Updated	

	Annual Volume	Average Ticket	Annual Transactions
VISA	\$ 16,000,000	\$ 20.00	800,000
MasterCard	\$ 8,000,000	\$ 20.00	400,000
Discover	\$ 1,500,000	\$ 20.00	75,000
American Express	\$ 2,000,000	\$ 20.00	100,000
JCB & Diners	\$ -	\$ -	0
PIN-Debit	\$ -	\$ -	0
Checks	\$ -	\$ -	0
EBT	\$ -	\$ -	0
Other	Estimated figures above	\$ -	0
Total	\$ 27,500,000		1,375,000

II. ACCOUNT IMPLEMENTATION & MAINTENANCE FEES

	Merchant Fee	Application	Comments
Account Set-Up & Implementation Fee	\$ -		
Application Fee	\$ -		
Rush Fee	\$ 40.00		
Monthly Statement Fee	\$ -		
Supply Fee	\$ -		
Terminal reprogram Fee (per unit)	\$ -		
Onsite Training	\$ -		
Research Fee	\$ -		
Other Fee	\$ -		

III. CARD PROCESSING FEES

Pricing Type: **Pass-Through**

All Visa, MasterCard, Discover and debit network authorization and Interchange fees, assessments, dues and other fees and charges are passed to Merchant at cost. Servicer Transaction processing fees include:

	Auth Fee (\$)	Settle Fee (\$)	Settle Fee (%)
Visa	\$ -	\$ -	0.0000%
MasterCard	\$ -	\$ -	0.0000%
Discover	\$ -	\$ -	0.0000%
PIN-Debit	\$ -	\$ -	0.0000%

Billing Method: **Gross**

Interchange, assessments, and dues will be assessed on all Visa, MasterCard, and Discover settled volume.

Servicer may adjust Merchant's pricing if (i) Merchant's annualized Visa/MasterCard/Discover average ticket or volume falls below projections by more than twenty percent (20%), or (ii) Merchant's Visa/MasterCard/Discover average ticket or volume for any month falls below fifty percent (50%) of such Visa/MasterCard/Discover average ticket or volume for any month falls below fifty percent (50%) of such Visa/MasterCard/Discover average ticket of volume during the same month the previous calendar year.

IV. AUTHORIZATION FEES - Servicer

Telecom Method	N/A
Additional Fee for Telecom	\$ -
American Express	\$ 0.1000
Diners	\$ -
JCB	\$ -
EBT	
Other Card Type	\$ - 0.0000%
Other Card Type	\$ - 0.0000%
Voice (VRU) Authorization	\$ 0.75
Voice Authorization with Address Verification	\$ 0.90
Operator-Assist Authorization	\$ 1.25
Bank Referral Authorization	\$ 4.00

V. OTHER TRANSACTION FEES & SERVICES



SCHEDULE A - SCHEDULE OF FEES

Batch Header Fee (per occurrence)	\$ -
AVS Fee (per occurrence)	\$ -
ACH Fee (per occurrence)	\$ -
ACH Returned Item Fee (per occurrence)	\$ -
FedWire Settlement (per occurrence, where available)	
Chargeback Fee (per occurrence)	\$ 25.00
Monthly Minimum (per location)	\$ 15.00
Monthly Minimum Start Date	8/1/2011
Other Fee	N/A
Other Fee	\$ -

VI. OPTIONAL SERVICES

A. Reporting

B. Foreign Networks & Gateways

Using a third party network or gateway below requires Servicer to add an additional fee per authorization. For foreign networks, this is a separate authorization fee, and for gateways, this Servicer fee will be added to the Servicer authorization fee noted in Section IV.

	Dial	IP	IP SSL
<input type="checkbox"/> TSYS Acquiring Solutions (Vital) Foreign Network			
<input type="checkbox"/> ADS Foreign Network			
<input type="checkbox"/> BuyPass Foreign Network			
<input type="checkbox"/> Global (Mapp or NDC) Foreign Network			
<input type="checkbox"/> FDMS (Envoy or Nashville) Foreign Network			
<input type="checkbox"/> MerchantLink Gateway			
<input type="checkbox"/> Other			

C. Equipment/Software



SCHEDULE A - SCHEDULE OF FEES	
-------------------------------	--

VII. VALUE ADDED PRODUCTS

VIII. PCI

Annual PCI Compliance Program Fee Schedule

Level	Number of MIDs in Relationship	IP	Non-IP
A	1 to 10	\$175.00	\$55.00
B	11 to 50	\$135.00	\$45.00
C	51 to 100	\$100.00	\$35.00
D	100+	\$85.00	\$30.00

Pricing Option (Select One):

All merchants must comply with the requirements of the Payment Card Industry Data Security Standards ("PCI DSS"). Elavon requires Level 4 merchants (determined based on transaction volume) to validate PCI DSS compliance on an annual basis, with initial validation to occur no later than ninety (90) days after account approval. Merchant will be charged either the Annual PCI Fee or the Annual Administration Fee described above. Elavon will waive this fee in year one, charging the fee in subsequent years on or about the anniversary date of account approval. Annual Administration Fee will be charged to merchants that use the services of another qualified assessor and attest to PCI DSS validation on the website designated by Elavon. Any merchant that has not validated PCI DSS compliance within ninety (90) days of account approval, or in subsequent years on or before the anniversary date of account approval, will be charged a monthly non-compliance fee until Elavon is provided with validation of compliance. Merchant may be eligible for Data Breach Coverage following account approval and PCI DSS compliance validation. See the PCI Compliance Program Overview for coverage details and conditions. Pricing is subject to change with a thirty (30) day advance notification.

PCI Compliance Validation Process: Complete your Payment Card Industry Data Security Standard (PCI DSS) validation. Visit our PCI website, <http://pci.elavon.com>, for education and tips on protecting cardholder data. You can also connect with our Visa® and MasterCard® accredited Qualified Security Assessor (QSA) and Approved Scanning Vendor (ASV). You must provide a certificate of compliance validation within ninety (90) days of account approval to avoid a monthly non-compliance fee.

IX. TERM

Term:

Initial Term of three (3) years with two (2) year Renewal Terms

Early Termination Fee	\$	-	X	number of months remaining
------------------------------	----	---	---	----------------------------

MERCHANT ACKNOWLEDGEMENT

Signature: _____

Name: _____

Title: _____



Key Merchant Services Pricing Guide

Equipment Type

VX610 Wireless Terminal -Verifone	
M4230 Wireless Terminal - Hypercom	
M4230 Hypercom Sim Card	
VX 610 Battery Charger	
vx 610 Additional Battery	
VX 610 Car Power Supply (Cigarette Lighter Charger)	
VX 610 Carrying Case	
VX 610 replacement antenna	
Manual Imprinter with plates (HandHeld device for emergency use)	

Other Fees

one time Set up fee for each location	
Monthly Statement Fee (only if paper-no charge for Internet):	
Monthly Minimum Processing Fee per location or Merchant ID	
Wireless Monthly Fee	

Visa / MC / Discover Interchange Plus pass Through Pricing

This equates to a \$.034 cent charge per transaction Plus Interchange and assessments on a \$20 fare and \$.0255 Cents on a \$15 dollar Fare

Voice Authorization fee	
Voice Authorization fee with operator assistance	
Bank Referral call to Issuing bank	
American Express Pass Through Fee	
<u>Non Bank Card Fees:</u>	
ChargeBack Fee	
Merchant Connect Premium reporting	
Merchant Connect Reporting*	

	Per Item	36 Month <u>Lease Option</u>	24 Month <u>Lease Option</u>
	<u>Purchase Price</u>		
	\$ 875.00	\$39 per mo	\$49 per mo
	\$ 749.00	\$35 per mo	\$45 per mo
	\$ 20.00		

\$ 99.00
\$ 79.00
\$ 129.00
\$ 99.00
\$ 25.00
\$ 25.00

\$ 20.00
\$ 5.00
\$ 15.00
\$ 19.00

0.17%

\$ 0.75
\$ 0.90
\$ 4.00
\$ 0.10
\$ 25.00
\$15 per mo.
Free



<u>Compliance Annual (PCI) Audit Fee per Merchant ID (MID)</u>	
Per Merchant ID PCI Audit Fee (internet/wireless terminals)	Annual Fee \$175.00
per Merchant ID PCI Audit Fee (Dial-Up Terminals)	\$55.00
PCI Validation Fee per MID	\$35
(Waived during six months of processing-Annual PCI Audit is required however the proprietor may use any Certified Auditor (not required to use our service, if SAQ's are not completed, \$29 per month fee until survey is complete.)	

* This Free reporting option is adequate for single locations / terminals

